

AGENDA
Land Development Code
Code Monitoring Team (CMT) Meeting
Wednesday • November 12, 2008 • 2:00 to 4:00 pm

Development Services Center (DSD) • Conference Room 5C
1222 First Avenue, San Diego, CA 92101

CMT MEMBERS:

- | | | |
|--|--|---|
| <input type="checkbox"/> Charles Bull
Historic Resources | <input type="checkbox"/> Scott Molloy
Building Industry Assoc. | <input type="checkbox"/> Vacant
Assoc. of Environmental Planners |
| <input type="checkbox"/> Norma Damashek
League of Women Voters | <input type="checkbox"/> Joanne Pearson
Sierra Club | <input type="checkbox"/> Vacant
American Society of Landscape Architects |
| <input type="checkbox"/> Molly Kirkland
S.D. Assoc. of Realtors | <input type="checkbox"/> Guy Preuss
Community Member – CPC | <input type="checkbox"/> Vacant
Business Owner at-Large |
| <input type="checkbox"/> John Leppert
American Society of Civil Engineers | <input type="checkbox"/> Steve Silverman
American Planning Assoc. | <input type="checkbox"/> Vacant
Chamber of Commerce |
| <input type="checkbox"/> Claude-Anthony Marengo
Community Member at-Large | <input type="checkbox"/> John Ziebarth
American Inst. of Architecture | <input type="checkbox"/> Vacant
Small Business |
| <input type="checkbox"/> Rebecca Michael
S.D. Bar Association | | |

ITEMS:

1. Non Agenda Public Comment
2. Wetland Deviation Amendments – Action Item (Anna McPherson/Jeanne Krosch)
3. Amateur Radio Communication Amendments – Action Item (Amanda Lee/Jana Garmo)

Next Meeting: December 10, 2008, 2:00 - 4:00 DSD Conference Room 5C



THE CITY OF SAN DIEGO
MAYOR JERRY SANDERS

M E M O R A N D U M

DATE: November 5, 2008

TO: Code Monitoring Team

FROM: Jeanne Krosch, Senior Planner, City Planning and Community Investment

SUBJECT: Amendments to the LDC Environmentally Sensitive Lands Regulations (ESL), consisting of clarifications to the development regulations for sensitive biological resources (Section 143.0141) specific to wetlands, deviations to the ESL regulations (Section 143.0150), and Amendments to the Land Development Manual (LDM) Biology Guidelines

The proposed amendments would clarify when impacts to wetlands may be allowed within the City of San Diego. The proposed clarifications to the current deviation findings would identify three options when impacts to wetlands may be allowed: Essential Public Projects, Economic Viability, and Biological Superior Option.

Background

During the public hearing for the Cousins Market Center project on August 1998, the City Council directed staff to examine the current deviation findings in the Municipal Code and recommend language to clarify when impacts to wetlands could be allowed. An ad hoc working group of environmental and development industry stakeholders, including the Building Industry Association, Southwest Center for Biological Diversity, Endangered Habitats League, and staff from former Mayor Golding's office, was formed to develop draft language to clarify the deviation process for wetland impacts. As part of this process the Wetlands Advisory Board provided conditions under which a biologically superior result could be attained from loss of low quality wetlands. Before consensus could be reached on the draft language, a lawsuit was filed against the City regarding impacts to vernal pools causing the City to postpone work on the wetland deviation findings.

A smaller working group was formed in 2001 made up of representatives from the Planning Department, development industry, environmental groups not involved in the vernal pool lawsuit, and the Mayor's office. This working group reached consensus on draft deviation findings for wetland impacts. In 2002, the LU&H subcommittee directed staff to work with a larger committee of stakeholders, including those not represented due to the pending litigation.

In 2003, a third working group was assembled to continue working on the wetland deviation language. Members of the working group included the Planning Department, environmental groups including those involved with the lawsuit, and the development industry. This group met between January 2003 and February 2004 and developed revised draft language. The proposal was taken to LU&H on March 10, 2004 and direction was given to: 1) complete the environmental review before referring item to City Council, 2) determine what essential public projects would qualify for the proposed deviation, 3) add a definition for the term "public projects", and 4) eliminate the option to provide standard mitigation plus maintenance endowment in perpetuity.

The project was presented as an informational item to the Code Monitoring Team in April 2008. In May 2008, the Wildlife Agencies responded to the Notice of Preparation for the Supplemental EIR (SEIR) and a provided staff with a modified version of the working group's proposal. City staff met with management and the mayor's representatives to review the two proposals and drafted a City recommended project. Please see attached Table 1 for a comparison of the three options and Table 2 for a brief summary of the differences between the options. The City recommended project and alternatives will be analyzed equally in the SEIR.

Discussion

In order to impact wetlands under the current regulations, the following deviation findings must be made [§126.0504(c)] :

- There are no feasible measures that can further minimize the potential adverse effects on ESL; and
- The proposed deviation is the minimum necessary to afford relief from special circumstance or conditions to the land and not of the applicant's making.

The proposed language would not replace the current language, but would instead add additional clarification as to when impacts to wetlands may be proposed. Wetland impacts may only be proposed for the following three options: 1) Essential Public Project; 2) Economic Viability; and 3) Biologically Superior Option. A brief summary of each option is described below.

Essential Public Project

Deviation from the strict application of ESL regulations may be warranted when an essential public project serving the needs of the community or region must be implemented and no feasible alternative exists which would avoid impacts to wetlands.

Under the proposed language, a project may qualify for a wetland impact deviation as an essential public project if it meets all of the following requirements:

- See proposed Essential Public Projects definitions in Table 1
- The proposed project and all project alternatives are fully disclosed and analyzed in a CEQA document,
- Potential impacts to wetland resources have been minimized to the maximum extent practicable, and
- The proposed project will fully mitigate all its impacts in accordance with the mitigation requirements in the City of San Diego Biology Guidelines.

Economic Viability

In order to preserve a private property owner's right to have economically viable use of their property; deviation from the strict application of ESL may be warranted. The purpose of this deviation finding is to disclose, evaluate, and objectively determine the economic viability of a proposed project with and without granting a deviation for impacts to wetlands. Any deviation for economic viability would be the minimum necessary to achieve economically viable use of the property, and would not be used to offset economic circumstances of the project applicant's making, such as a poor investment decision by a landowner. Under the proposed language, a project may qualify for a wetland impact deviation under economic hardship if it meets all of the following requirements:

- The applicant has disclosed all the required information for the City to determine if the deviation is necessary to achieve economically viable use of the property,
- The information has been reviewed by an outside economic consultant and City staff, and the City Council make findings that all economically viable use of a property will be removed with strict application of the ESL, and
- The proposed project has avoided, minimized and mitigated to the maximum extent feasible under the City of San Diego Biology Guidelines.

Biologically Superior Option

A deviation from the strict application of ESL regulations may be warranted if the project achieves a superior biological result. The current deviation findings do not specifically allow consideration of a biologically superior option to justify impacts. This can result in preservation of low quality wetlands with little or no long-term biological benefit.

The deviation would only be granted if it is determined that impacts to lower quality biological resources are acceptable in exchange for mitigation that not only offset the loss of the resource, but also increases the long-term function and value of the resources being impacted.

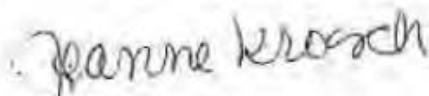
Under the proposed language, a project may qualify for a wetland impact deviation under the Biologically Superior option if it meets all of the following requirements:

- The proposed project, including a no project alternative, a wetlands avoidance alternative, and a biologically superior alternative (this could be the proposed project), are fully disclosed and analyzed in an appropriate CEQA document,
- The wetland resources being impacted by the proposed project are of low biological quality,
- The proposed project and mitigation result in a biologically superior net gain in overall functions and values for the type of wetland resource being impacted, and
- The United States Fish and Wildlife Service and California Department of Fish and Game have concurred that the alternative is indeed biologically superior.

Based upon the original criteria provided by Wetlands Advisory Board, detailed criteria were developed by the working group to allow for the determination of low quality under the proposed deviation findings. If it is determined that a wetland is not low quality, impacts to that wetland can not be considered under the deviation for biologically superior alternative.

Current Status

It is anticipated that the draft SEIR will be out for public review in mid-November, 2008 and to the decision-makers in early, 2009.



Jeanne Krosch
Senior Planner

JK/jk

Attachments:

1. Table 1 – Comparison of City Recommended Project & Alternatives
2. Table 2 - Summary of differences between City Recommended Project & Alternatives

§143.0141 Development Regulations for Sensitive Biological Resources

Development that proposes *encroachment* into *sensitive biological resources* or that does not qualify for an exemption pursuant to Section 143.0110(c) is subject to the following regulations and the Biology Guidelines in the Land Development Manual.

(a) General Regulations for Sensitive Biological Resources

(1)(i) All *development* occurring in *sensitive biological resources* is subject to a site-specific impact analysis conducted by a qualified Biologist ~~the City Manager~~, in accordance with the Biology Guidelines in the Land Development Manual. The impact analysis shall evaluate impacts to *sensitive biological resources* and CEQA sensitive species. The analysis shall determine the corresponding mitigation, where appropriate, and the requirements for protection and management. Mitigation may include any of the following, as appropriate to the nature and extent of the impact:–

(A) Dedication in fee title to the City of San Diego; or

(B) Dedication of a covenant of easement or conservation easement in favor of the City of San Diego and the Wildlife Agencies either:

~~(1)(i)~~ Acquisition or dedication of another site that can serve to mitigate project impacts; For an off-site location with long-term viability and biological values equal to or greater than the impacted site, and with limited right of entry for habitat management, as necessary, if the site is not dedicated. This site must have long-term viability and the biological values must be equal to or greater than the impacted site; or

~~(2)(ii)~~ Preservation or dedication of For on-site sensitive biological resources, creation of new habitat, or enhancement of existing degraded habitat, with limited right of entry for habitat management, as necessary, if the site is not dedicated. The site must have long-term viability and the biological values must be equal to or greater than the impacted area.

~~(3)(C)~~ In circumstances where the area of impact is small, monetary payment of compensation into a fund may be accepted in lieu of other forms of mitigation. The City shall use the fund to acquire, maintain and administer habitat

areas pursuant to City Council Resolution No. R-275129, adopted February 12, 1990. Where appropriate, the City Manager is authorized to enter into agreements with public agencies or private non-profit conservancies or foundations to administer the funds and acquire or maintain habitat preservation areas.

- (2) ~~(f)~~ *Grading* during wildlife breeding seasons shall be consistent with the requirements of the City of San Diego *MSCP Subarea Plan* and the Biology Guidelines.

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- (3) ~~(g)~~ *Sensitive biological resources* that are outside of the allowable development area on a *premises*, or are acquired as off-site mitigation as a condition of permit issuance, are to be left in a natural state and used only for those passive activities allowed as a condition of permit approval. If the land is not dedicated in fee to the City, identification of permissible passive activities and any other conditions of the permit shall be incorporated into a covenant of easement or conservation easement that shall be recorded against title to the property, in accordance with procedures set forth in Section 143.0152. The U.S. Fish and Wildlife Service and the California Department of Fish and Game are to be named as third party beneficiaries to any covenant of easement or conservation easement recorded pursuant to this section.

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- (4) ~~(e)~~ Inside and adjacent to the *MHPA*, all *development* proposals shall be consistent with the City of San Diego *MSCP Subarea Plan* and the Biology Guidelines.

(5) Narrow Endemic Species

Inside the *MHPA*, *development* shall avoid impacts to narrow endemic species. Outside the *MHPA*, measures for protection of narrow endemic species shall be required such as management enhancement, restoration and/or transplantation. A list of narrow endemic species is included in the Biology Guidelines in the Land Development Manual.

(b) Wetland Regulations

- (a) (1) State and federal law ~~precludes~~ regulates adverse impacts to *wetlands* ~~or~~ and listed non-covered species within wetland and upland habitats. The *applicant* shall confer, when as applicable, with the U.S. Army Corps of Engineers, U.S. Fish & Wildlife Service and/or California Department of Fish and Game before any public hearing for the *development* proposal.

- (2) The applicant shall solicit input from the Resource Agencies on impact avoidance, minimization, mitigation and buffer requirements, including the need for upland transitional habitat.
- (3) The applicant shall, to the maximum extent feasible, incorporate the Resource Agencies' recommendations prior to the first public hearing.
- (4) *Grading or construction permits* shall not be issued for any project that impacts *wetlands* or listed non-covered species habitat until all necessary federal and state permits have been obtained.
- (b) (5) ~~Outside and inside the MHPA, i~~Impacts to *wetlands*, including vernal pools in naturally occurring complexes, shall be avoided. A *wetland buffer* shall be maintained around all *wetlands* as appropriate to protect the functions and values of the *wetland*. In the Coastal Overlay Zone the applicant shall provide a minimum 100-foot buffer, unless a lesser or greater buffer is warranted as determined through the process described in 143.0141(a). ~~Mitigation for impacts associated with a deviation shall achieve the goal of no net loss and retain in-kind functions and values.~~

§143.0150 Deviations from Environmentally Sensitive Lands Regulations

Plans submitted in accordance with this section shall, to the maximum extent feasible, comply with the regulations of this division. If a proposed *development* does not comply with all applicable *development* regulations of this division and a deviation is requested as indicated in Table 143-01A, the Planning Commission may approve, conditionally approve, or deny the proposed Site Development Permit in accordance with Process Four, subject to the following:

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- (a) (No Change)
- (b) (No Change)
- (c) (No Change)

(d) Deviations to the wetland regulations of this division for *development* located outside of the Coastal Overlay Zone may be granted only if the *development* is an Essential Public Project, is necessary to preserve economic viability, and/or a Biologically Superior Option in accordance with the following:

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(1) Essential Public Projects

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(A) A deviation may only be requested for an Essential Public Project where no feasible alternative exists that would avoid impacts to wetlands as described in the Biology Guidelines.

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(B) For the purpose of this section, Essential Public Projects shall include:

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(i) Any public project identified in an adopted land use plan or implementing document and identified on the Essential Public Projects List adopted by Resolution No.[insert No.] as Appendix [insert appendix] to the Biology Guidelines; or

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(ii) Linear infrastructure, including but not limited to major roads and land use plan circulation element roads and facilities including bike lanes, water and sewer pipelines including appurtenances, and stormwater conveyance systems including appurtenances; or

(iii) Maintenance of existing public infrastructure; or

(iv) State and federally mandated projects.

(B) A deviation may be requested for an Essential Public Project where no feasible alternative exists that would avoid impacts to wetlands as described in the Biology Guidelines.

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(2) Economic Viability

A deviation may be requested to preserve economically viable use of a property that would otherwise be deprived by a strict application of the regulations. Such a deviation shall be the minimum necessary to achieve economically viable use of the property and shall avoid wetland resources to the maximum extent practicable as described in the Biology Guidelines.

(3) Biologically Superior Option

(A) A deviation may be requested to achieve a superior biological result which would provide a net increase in quality and viability (functions and value) and long term biological benefit as described in the Biology Guidelines.

(B) Wetland resources that would be impacted by the project shall be demonstrated to be of low biological quality as described in the Biology Guidelines. The applicant shall obtain concurrence on the deviation findings for the Biologically Superior Option from the United States Fish and Wildlife Service and California Department of Fish and Game.

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San Diego Municipal Code

Land Development Code Manual

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Biology Guidelines

Adopted September 28, 1999

Amended June 6, 2000 by Resolution No. R-293254-1

Amended May 19, 2001 by Resolution No. R-294943

Amended by Resolution No. x-xxxxxx

This information, document, or portions thereof, will be made available in alternative formats upon request.

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Section 1 **DEFINITIONS**

These Guidelines have been formulated by the ~~Planning and Development Review Services~~ Department (**DSD**) to aid in the implementation and interpretation of the Environmentally Sensitive Lands Regulations (ESL), San Diego Land Development Code, Chapter 14, Division 1, Section 143.0101 et seq. and the Open Space Residential (OR-1-2) Zone, SDLDC, Chapter 13, Division 2, Section 131.0201 et seq. Section III of these Guidelines (Biological Impact Analysis and Mitigation Procedures) also serve as standards for the determination of impact and mitigation under the California Environmental Quality Act (CEQA) and the Coastal Act.

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These guidelines are the baseline biological standards for processing Neighborhood Development Permits, Site Development Permits and Coastal Development Permits issued pursuant to the ESL. For impacts associated with steep hillsides, please refer to the Steep Hillside Guidelines for the Environmentally Sensitive Lands Regulations.

A. Sensitive Biological Resources

The ESL defines sensitive biological resources as those lands included within the Multiple Habitat Planning Area (MHPA) as identified in the City of San Diego's Multiple Species Conservation Program (MSCP) Subarea Plan (City of San Diego 1995), and other lands outside of the MHPA that contain wetlands; vegetation communities classifiable as Tier I, II, IIIA or IIIB; habitat for rare, endangered or threatened species; or narrow endemic species.

1. The Multi-Habitat Planning Area (MHPA) are those lands that have been included within the City of San Diego's MSCP Subarea Plan for habitat conservation. These areas have been determined to provide the necessary habitat quantity, quality and connectivity to support the future viability of San Diego's unique biodiversity and thus are considered to be a Sensitive Biological Resource. The City of San Diego's MHPA contains "hard-lines," with limited development permitted based on the development area allowance of the OR-1-2 zone in order to achieve an overall 90% preservation goal (see Section II.B for discussion of OR-1-2 zone).

The boundaries of the MHPA are depicted on 1"=2000-foot scale maps and in many areas of the City on 1"= 800-foot scale maps.

2. Wetlands: Many of the species included in the MSCP (i.e., Covered Species) are dependent on wetlands for habitat and foraging. The definition of wetlands in the ESL regulation is intended to differentiate uplands (terrestrial areas) from wetlands, and furthermore to differentiate naturally occurring wetland areas from those created by human activities. Except for areas created for the purposes of wetland habitat or resulting from human actions to create open waters or from the alteration of natural stream courses, it is not the intent of the City to regulate artificially

created wetlands in historically non-wetland areas unless they have been delineated as wetlands by the Army Corps of Engineers, and/or the California Department of Fish and Game. For the purposes of the ESL, artificially created lakes such as Lake Hodges, artificially channeled floodways such as the Carmel Valley Restoration and Enhancement Project

(CVREP) and previously dredged tidal areas such as Mission Bay should be considered wetlands under the ESL regulations. The following provides guidance for defining wetlands regulated by the City of San Diego under the Land Development Code.

Naturally occurring wetland vegetation communities are typically characteristic of wetland areas. Examples of wetland vegetation communities include saltmarsh, brackish marsh, freshwater marsh, riparian forest, oak riparian forest, riparian woodland, riparian scrub and vernal pools. Common to all wetland vegetation communities is the predominance of hydrophytic plant species (plants adapted for life in anaerobic soils). Many references are available to help identify and classify wetland vegetation communities; Holland (1986), Cowardin et al. (1979), Keeler-Wolf and Sawyer (1996), and Zedler (1987). The U.S. Army Corps of Engineers Wetland Delineation Manual (1987) provides technical information on hydrophytic species.

Problem areas can occur when delineating wetlands due to previous human activities or naturally occurring events. Areas lacking naturally occurring wetland vegetation communities are still considered wetlands if hydric soil or wetland hydrology is present and past human activities have occurred to remove the historic vegetation (e.g., agricultural grading in floodways, dirt roads bisecting vernal pools, channelized streambeds), or catastrophic or recurring natural events preclude the establishment of wetland vegetation (e.g., areas of scour within streambeds, coastal mudflats and salt pannes that are unvegetated due to tidal duration). The U.S. Army Corps of Engineers Wetland Delineation Manual (1987) provides technical information on hydric soils and wetland hydrology.

Seasonal drainage patterns that are sufficient enough to etch the landscape (i.e. ephemeral/intermittent drainages) may not be sufficient enough to support wetland dependent vegetation. These types of drainages would not satisfy the City's wetland definition unless wetland dependent vegetation is either present in the drainage or lacking due to past human activities. Seasonal drainage patterns may constitute "waters of the United States" which are regulated by the Army Corps of Engineers and/or the California Department of Fish and Game.

Areas lacking wetland vegetation communities, hydric soils and wetland hydrology due to non-permitted filling of previously existing wetlands will be considered a wetland under the ESL and regulated accordingly. The removal of the fill and restoration of the wetland may be required as a condition of project approval.

Areas that contain wetland vegetation, soils or hydrology created by human activities in historically non-wetland areas do not qualify as wetlands under this definition unless they have been delineated as wetlands by the Army Corps of Engineers, and/or the California Department of Fish and Game. Artificially created wetlands consist of the following: wetland vegetation growing in brow ditches and similar drainage structures outside of natural drainage courses, wastewater treatment ponds, stock watering, desiltation and retention basins, water ponding on landfill surfaces, road ruts created by vehicles and artificially irrigated areas which would revert to uplands if the irrigation ceased. Areas of historic wetlands can be assessed using historic aerial photographs, existing environmental reports (EIRs, biology surveys, etc.), and other collateral material such as soil surveys.

Some coastal wetlands, vernal pools and riparian areas have been previously mapped. The maps, labeled C-713 and C-740 are available to aid in the identification of wetlands. Additionally, the 1":2000' scale MSCP vegetation maps may also be used as a general reference, as well as the U.S. Fish and Wildlife Service (USFWS) National Wetlands Inventory maps. These maps, available for viewing at the Development Services Department, should not replace site-specific field mapping.

3. Vegetation Communities within the MSCP study area have been divided into four tiers of sensitivity (the first includes the most sensitive, the fourth the least) based on rarity and ecological importance.

Tier I habitats include lands classified as southern fore dunes, Torrey pines forest, coastal bluff scrub, maritime succulent scrub, maritime chaparral, native grasslands, and oak woodlands. Tier II includes lands classified as coastal sage scrub and coastal sage scrub/chaparral. Tier IIIA includes lands classified as mixed chaparral and chamise chaparral. Tier IIIB includes lands classified as non-native grassland. Tier IV includes lands classified as disturbed, agriculture, and eucalyptus.

Classifications should use the California Department of Fish and Game (CDFG) listing of community associations (Holland 1986) as a reference for classifying vegetation. The City's MSCP and Biology Guidelines are based on vegetation classifications provided in Holland and revised Holland (Oberbauer 2008 and 2005). An alternative mapping methodology that is also acceptable to the City of San Diego is Sawyer and Keeler-Wolf (1995).

4. Listed Species: Habitats supporting plant or animal species which have been listed or proposed for listing by the federal or state government as rare, endangered, or threatened ("listed species") are also considered sensitive biological resources under

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the ESL. Note: Some listed species are considered adequately conserved under the MSCP (Covered Species). Others are not (Listed Non-covered Species).

5. Narrow Endemic Species: Species adopted by the City Council as narrow endemic species, identified below, are considered sensitive biological resources (Note: Some of these narrow endemic species are also listed species):

Narrow Endemic Species

<i>Acanthomintha ilicifolia</i>	San Diego thornmint
<i>Agave shalii</i>	Shaw's agave
<i>Ambrosia pumila</i>	San Diego ambrosia
<i>Aphanisma blitoides</i>	Aphanisma
<i>Astragalus tener</i> var. <i>titi</i>	Coastal dunes milk vetch
<i>Baccharis vanessae</i>	Encinitas baccharis
<i>Dudleya blochmaniae</i> ssp. <i>brevifolia</i>	Short-leaf live-forever
<i>Dudleya variegata</i>	Variegated dudleya
<i>Eryngium aristulatum</i> var. <i>parishii</i>	San Diego button-celery
<i>Hemizonia conjugens</i>	Otay tarplant
<i>Nararretia fossalis</i>	Prostrate navarretia
<i>Opuntia parryi</i> var. <i>serpentina</i>	Snake cholla
<i>Orcuttia californica</i>	Orcutt grass
<i>Pogogyne abramsii</i>	San Diego mesa mint
<i>Pogogyne nudiuscula</i>	Otay Mesa mint

6. Covered Species: Covered species are those species included in the Incidental Take Authorization issued to the City by the federal or state government as part of the City's MSCP Subarea Plan. The term "non-covered species" is sometimes used to identify species not included in the Incidental Take Authorization. A list of these covered species ~~are is~~ provided in Appendix A.

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B. Wetland Buffers

A wetland buffer is an area or feature(s) surrounding and identified wetland that helps to protect the functions and values of the adjacent wetland by reducing physical disturbance from noise, activity and domestic animals, and provides a transition zone where one habitat phases into another. The buffer will also protect other functions and values of wetland areas including absorption and slowing of flood waters for flood and erosion control, sediment filtration, water purification, ground water recharge, and the need for upland transitional habitat. Within the Coastal Overlay Zone, uses permitted within wetland buffers are specified in Section 143.0130(e) of the ESL.

Section II

DEVELOPMENT REGULATIONS

Specific development regulations pertaining to sensitive biological resources exist in the Municipal Code in both the Environmentally Sensitive Lands Regulations (Chapter 14, Division 1, Section 143.0141) and the OR-1-2 Zone (Chapter 13, Division 2, Section 131.0230). The following guidelines are provided to supplement these development regulation requirements.

A. Environmentally Sensitive Lands (ESL)

1. Wetlands and Listed Non-Covered Species Habitat

a. Permits required

Wetlands and Listed Non-covered Species are protected by federal and state regulations (Listed non-covered species are those species listed as rare, threatened or endangered which are not covered by the Incidental Take Authorization issued to the City by the federal or state governments under the MSCP Plan. A list of species covered by the MSCP is provided in Appendix A).

It is recognized that some projects will be required to obtain federal and state permits. Applicants will be required to confer with the appropriate federal and state agencies prior to the public hearing for the development proposal, and incorporate any federal or state requirements into their project design.

The discretionary permit and any associated subdivision map will be conditioned to restrict the issuance of any grading permit until all necessary federal and state permits have been obtained and a copy of the permit, authorization letter or other official mode of communication from the Resource Agencies is transmitted to the City of San Diego. City public projects do not need a grading permit, however these projects will still be required to obtain all necessary federal and state permits prior to any clearing or grading of the project site.

b. Impacts to wetlands and buffer limits

Under the ESL, impacts to wetlands should be avoided. For vernal pools, avoidance of a sufficient amount of the watershed necessary for the continuing viability of the ponding area is also required. Unavoidable impacts should be minimized to the maximum extent practicable. Whether or not an impact is unavoidable will be determined on a case-by-case basis. Examples of unavoidable impacts include those necessary to allow reasonable use of a parcel entirely constrained by wetlands, roads where the only access to the developable portion of the site results in impacts to wetlands, and essential public facilities (essential roads, sewer, water lines, etc.) where no feasible alternative exists.

Unavoidable impacts will need to be mitigated in accordance with Section III.B.1.a of these guidelines.

A wetland buffer shall be maintained around all wetlands as appropriate to protect the functions and values of the wetland. Section 320.4(b)(2) of the U.S. Army Corps of Engineers General Regulatory Policies (33CFR 320-330) list criteria for consideration when evaluating wetland functions and values. These include wildlife habitat (spawning, nesting, rearing, and foraging), food chain productivity, water quality, ground water recharge, and areas for the protection from storm and floodwaters.

c. Impacts to wetlands and buffer limits within the Coastal Overlay Zone

Within the Coastal Overlay Zone, both within and outside the MHPA, impacts to wetlands shall be avoided and only those uses identified in Section 143.0130(d) of the ESL shall be permitted which are limited to aquaculture, nature study projects or similar resource dependent uses, wetland restoration projects and incidental public service projects. Such impacts to wetlands shall only occur if they are unavoidable, the least environmentally-damaging feasible alternative, and adequate mitigation is provided.

Wetland buffers should be provided at a minimum 100 feet wide adjacent to all identified wetlands within the Coastal Overlay Zone (Section 143.0141(b)). The width of the buffer may be either increased or decreased as determined on a case-by-case basis, in consultation with the California Department of Fish and Game, the U.S. Fish and Wildlife Service, and the Army Corps of Engineers, taking into consideration the type and size of development, the sensitivity of the wetland resources to detrimental edge effects, natural feature such as topography, the functions and values of the wetland and the need for upland transitional habitat. Examples of functional buffers include areas of native or non-invasive landscaping, rock/boulder barriers, berms, walls, fencing, and similar features that reduce indirect impacts on the wetland. Measures to reduce adverse lighting and noise should also be addressed where appropriate. Section 1.4.3 Land Use Adjacency Guidelines of the City's MSCP Subarea Plan can be used to help determine appropriate measures for wetland buffers. A 100-foot minimum buffer area shall not be reduced when it serves the functions and values of slowing and absorbing flood waters for flood and erosion control, sediment filtration, water purification, and ground water recharge. Deviations from the Environmentally Sensitive Lands Regulations within the Coastal Overlay Zone shall be approved only after the decision maker makes an economically viable use determination and findings pursuant to Section 126.0708(e).

2. Development in the MHPA

For parcels outside of the Coastal Overlay Zone and wholly or partially within the MHPA, development is limited to the development area allowed by the OR-1-2 Zone, as described below (see Section II.B). Zone 2 brush management is considered “impact neutral” and is not considered part of the proposed development area. The development area must be located on the least sensitive portions of the site. The following list, in order of increasing sensitivity, is provided as a guideline for assessing the least sensitive portion of the site. Projects should be designed to avoid impacts to covered species where feasible. This list should be used in combination with existing site-specific biological information, such as potential edge-effects from existing and proposed development, preserve configuration, habitat quality, wildlife movement, and topography.

- a. Areas devoid of vegetation, including previously graded areas and agricultural fields.
- b. Areas of non-native vegetation, disturbed habitats, and eucalyptus woodlands.
- c. Areas of chamise or mixed chaparral, and non-native grasslands.
- d. Areas containing coastal scrub communities.
- e. All other upland communities.
- f. Occupied habitat of listed species, narrow endemic species, *Muilla clevelandii* (San Diego goldenstar), and all wetlands.
- g. All areas necessary to maintain the viability of wildlife corridors (e.g., linear areas of the MHPA < 1000' wide).

Within each of the previous categories (a-g above), areas containing steep hillsides will be considered more sensitive than those areas without steep hillsides.

Proposed development must be sited on the least sensitive areas and may only encroach into more sensitive areas in order to achieve the allowable development area. Within the Coastal Overlay Zone, specific discretionary encroachment limitations into steep hillsides containing sensitive biological resources are established in Section 143.0142(a)(4) of the ESL which shall supersede the allowable development area permitted pursuant to the OR-1-2 zone.

In addition to the previous siting requirements, any development inside the MHPA which identifies the occurrence of the following species must include an impact avoidance area as follows:

- 300 feet from any nesting site of Cooper's hawk (*Accipiter cooperii*).
- 1,500 feet from known locations of the southern pond turtle (*Clemmys marmorata pallida*).
- 900 feet from any nesting sites of northern harriers (*Aquila chrysaetos*).
- 4,000 feet from any nesting sites of golden eagles (*Speotyto cunicularia hypugaea*).
- 300 feet from any occupied burrow of burrowing owls (*Speotyto cunicularia hypugaea*).

These conditions are requirements of the Incidental Take Authorization in order to consider these species adequately conserved.

3. Development Outside of the MHPA

For parcels outside of the Coastal Overlay Zone and the MHPA, there is no limit on encroachments into sensitive biological resources, with the exception of wetlands and listed non-covered species habitat (which are regulated by federal and state agencies and narrow endemic species as described below). However, impacts to sensitive biological resources must be assessed, and mitigation, where necessary, must be provided in conformance with Section III of these guidelines. Within the Coastal Overlay Zone, specific encroachment limitations into steep hillsides containing sensitive biological resources, and permitted uses within wetlands are established in Section 143.0142(a) and Section 143.0130(d) respectively, which, in case of conflict, shall supersede other regulations of the ESL. ~~[Note: Encroachment into areas outside of the MHPA that are designated and zoned as open space would be limited to the encroachment allowed by the underlying zone].~~

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Outside the MHPA, projects must incorporate additional measures for the protection of narrow endemics. These measures can include management (e.g., fencing, signage), enhancements (e.g., removal of exotic species), restoration (e.g., expansion of existing populations) and/or translocation into areas of protected open space. The appropriate measure(s) should be determined on a case-by-case basis, depending on the autecology of the species and the size, type and location of the proposed development.

4. Restrictions on Grading

All clearing, grubbing or grading (inside and outside the MHPA) will be restricted during the breeding season where development may impact the following species:

~~October 2008~~

- Western snowy plover (March 1 – September 15)
- Southwestern flycatcher (May 1 – August 30)
- Least tern (April 1 – September 15)
- Cactus wren (February 15 – August 15)
- Least Bell's vireo (March 15 – September 15)
- Tri-colored black bird (March 1 – August 1)
- California gnatcatcher (March 1 – August 15 inside MHPA only.
(No restrictions outside MHPA)

B. Open Space Residential Zone (OR-1-2)

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The OR-1-2 Zone provides for low-density residential, agricultural and passive open space uses. Every parcel zoned OR-1-2 has a development area as follows:

1. Development Area.

The allowable development area of a site (premise) within the OR-1-2 zone includes all portions of the site, both developed and undeveloped, that occur outside of the MHPA. If this area is less than 25% of the total size of the site, then the development area would also include the amount of encroachment into the MHPA necessary to achieve development on 25% of the site (see Figure 1). The location of any allowable development into the MHPA would be determined by the ESL, as outlined above (Section II.A.2). No encroachment into the MHPA beyond the development area is allowed. All areas outside of the development area (remainder area) would be left in a natural undeveloped condition, except for those passive uses permitted by the OR-1-2 zone. At the time of development, a covenant may be recorded or conservation easement granted on property not dedicated to the City (see Section III.B.2).

Premises less than four acres in size that are partially or wholly in the MHPA would be allowed a development area of 1 acre in areas where the MHPA is of at least 1000 feet in width. The measurement of the MHPA width should be as follows: a straight line drawn through any portion of the premises should be a minimum of 1000 feet from the edges of the MHPA.

Up to an additional 5% development area inside the MHPA is permitted in order to accommodate essential public facilities, as identified in an adopted Land Use Plan (e.g., Community Plan, Specific Plan). Essential public facilities include identified circulation element roads, major water and sewer lines, publicly owned schools, parks, libraries, and police and fire facilities. Roads, water and sewer lines that service a proposed project, and are not identified on the existing Land Use Plan, previously adopted by City Council, do not qualify for the additional 5% development area. The additional 5% development area will require mitigation pursuant to Section III.

All areas of grading, including cut and fill slopes (even if proposed for revegetation), Zone 1 of brush management, and any temporary staging areas should be considered part of the development area. Zone 2 of brush management may occur outside of the development area. Temporary disruptions of habitat and temporary staging areas that do not alter landform and that will be revegetated are generally not considered to be permanent habitat loss. Staff will work with the applicant to ensure that appropriate revegetation and restoration will be completed as part of the development process.

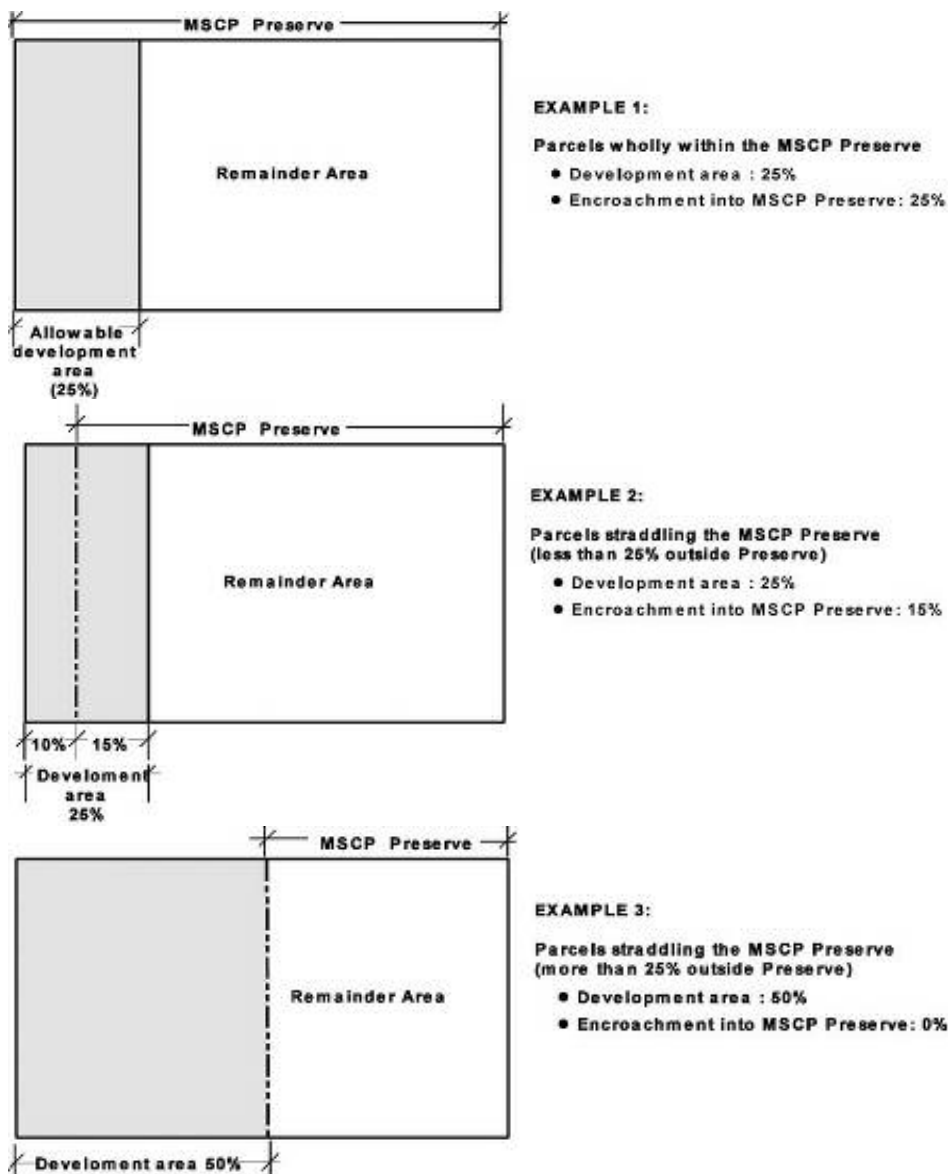
2. Development Area within the Coastal Overlay Zone.

There are specific and discretionary encroachment limitations into steep hillsides containing sensitive biological resources established in Section 143.0142(a)(4) of the ESL. These restrictions are designed to assure that development onto steep hillsides containing sensitive biological resources is minimized. Additionally, development within wetlands shall be avoided to the maximum extent possible. In the event impacts to wetlands are unavoidable, only uses identified in Section 143.0130(d), which include aquaculture, wetlands-related scientific research and education uses, wetland restoration projects and incidental public service projects shall be permitted within wetlands. These uses are only permitted where it has been demonstrated that there is no less environmentally damaging feasible alternative and mitigation has been provided. In case of conflict with the OR-1-2 Zone and/or other regulations, these regulations shall supercede and apply.

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[Note: The Development Regulations of the OR-1-2 Zone apply to all property within the MHPA. In some cases, parcels may be zoned other than OR-1-2, but would still be subject to the OR-1-2 development area regulations pursuant to the ESL (Sec. 143.0141(d))]

FIGURE 1
OR-1-2 ZONE DEVELOPMENT AREA
(OUTSIDE THE COASTAL OVERLAY ZONE) EXAMPLES



Section III

BIOLOGICAL IMPACT ANALYSIS AND MITIGATION PROCEDURES

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Mitigation is the process of reducing significant impacts to below a level of significance. The process of identifying biological mitigation under the ESL and CEQA consists of two parts;

- The identification of significant biological impacts, and
- The identification of the corresponding mitigation requirements to reduce the impacts to below a level of significance.

The following procedures are to be used for identifying and mitigating impacts to sensitive biological resources.

These guidelines are provided to establish city-wide consistency and equity among projects. Diversion from these guidelines may have significant effects on the successful implementation of the MSCP, and thus a possible significant effect on regional biodiversity conservation. Therefore, any significant proposed deviation would require a site-specific analysis in the Biological Survey Report to identify what effects, if any, it would have on the regional MSCP. The City Manager or ~~Mayor Designee~~ will be the final authority to determine the adequacy of any mitigation that is recommended to the City decision-maker.

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A. Identification of Impacts

1. Biological Survey Report.

A biological survey report is required for all proposed development projects which are subject to the ESL regulations, and/or where the CEQA review has determined that there may be a significant impact on other biological resources considered sensitive under CEQA. Table 1 outlines the survey requirements for various biological resources inside and outside the MHPA. ~~The biological survey conducted as part of the MSCP may be used where the applicant and the City agree that the MSCP data adequately reflects the habitats and species found on the site, or the applicant may prepare a survey, according to the City of San Diego's Biological Survey Guidelines (City of San Diego 2000), for purposes of refining and/or confirming the regional MSCP biological data (i.e., vegetation and sensitive species maps).~~ The Biological Survey Report must identify and map biological resources present on the site, including any portions of the site identified as part of the MHPA and any species considered sensitive pursuant to CEQA (see Table 1 – Summary of Biological Survey Requirements) and in accordance with the Guidelines for Conducting Biological Surveys (Appendix I). Each vegetation community type should be categorized into either wetlands or one of four upland Habitat Tiers. City staff will confirm the adequacy of all maps during the CEQA environmental review process.

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The location and extent of each resource must be clearly identified on a map of an appropriate scale (same scale as development drawings), on which the acreage of each vegetation community must be provided. Individual sensitive species must be depicted on the map and territories identified where they have been determined. It is expected that the mapping scale will vary with size and type of project proposed.

The minimum mapping units should be clearly identified in the text of the report, and should be based on the mapping scale and the vegetation community. A minimum mapping unit for uplands of approximately $\frac{1}{4}$ acres is generally considered acceptable for the 1"=200' scale.

If surveys for state or federally listed sensitive or MSCP-covered species are completed more than 24 months before the application is submitted, then the surveys should be updated, as appropriate, to accurately reflect resources on site. Surveys should be done at the appropriate time of year to detect presence/absence of sensitive species. If surveys are not done at the appropriate time of year, and the potential for occurrence is moderate to high (based on historical knowledge, site records, determination by the biologist, etc.), then it will be concluded that their presence exists on the property. Biological surveys for projects that have not yet been approved are valid for three years. If over three years old, the survey and report must be updated to reflect the most current conditions affecting the project site.

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TABLE 1:
Summary of Biological Survey Requirements

<u>RESOURCE</u>	<u>SURVEY REQUIREMENTS</u>	
	<u>Inside MHPA</u>	<u>Outside MHPA</u>
<u>Vegetation</u>		
<u>Uplands</u>	<u>Confirm/Revise MSCP mapping.</u>	<u>Confirm/Revise MSCP mapping.</u>
<u>Wetlands</u>	<u>Delineate wetlands per City definition</u>	<u>Delineate wetlands per City definition</u>
<u>Covered spp¹</u>		
<u>Listed spp</u> (e.g. gnatcatcher)	<u>Focused survey per protocol</u>	<u>Per MSCP conditions of coverage²</u>
<u>Narrow endemic</u> (e.g. S.D. Thornmint)	<u>Focused survey per protocol</u>	<u>Focused survey per protocol</u>
<u>Other</u> (e.g., SD horned lizard)	<u>Survey as necessary to comply with siting citing requirements as outlined in Section II.A.2 of these Guidelines.</u>	<u>Per MSCP conditions of coverage²</u>
<u>Non-Covered spp¹</u>		
<u>Listed spp</u> (e.g. pacific pocket mouse)	<u>Focused survey per protocol</u>	<u>Focused survey per protocol</u>
<u>“Other Sensitive Species”</u> (e.g. little mouse tails)	<u>Case-by-case determination depending on the spp.</u>	<u>Case-by-case determination depending on the spp.</u>

Notes:

1. Based upon the MSCP mapping, site specific surveys, the NDDB records, previous EIRs and biological surveys and/or discussion with the wildlife agencies, the potential for listed species, narrow endemic and CEQA sensitive species will be determined. Where there is a reasonable likelihood that one of these species exists, surveys will follow the above requirements.
2. Survey as necessary to conform with Appendix A of the City of San Diego MSCP Subarea Plan (March 1997).
3. “Other Sensitive Species”. Those other species that are not listed by federal and/or state agencies and/or not covered by the MSCP and to which any impacts may be considered significant under CEQA.

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2. Impact Analysis.

The Biological Survey Report must identify all potential impacts from the development (both on-site impacts and off-site impacts such as roads, water and sewer lines) to sensitive biological resources and to other significant biological resources as determined by the CEQA process (i.e., sensitive, non-covered species). The report should evaluate the significance of these impacts. Impact assessments need to include analysis of direct impacts (e.g., grading, Zone 1 brush management), indirect impacts (e.g., noise, lighting) and cumulative impacts. The City of San Diego's Development Services Department CEQA Significance Determination Thresholds (City of San Diego 2007) should be used as a reference. Mitigation for direct impacts will be assessed in accordance with Tables 2 and 3 these guidelines. Cumulative impacts for covered species should be addressed under the MSCP Subarea Plan and may be referenced. Zone 2 brush management is considered impact neutral (not considered an impact and not considered acceptable as a mitigation area). Indirect impacts to covered species could be mitigated by conformance to Section 1.4.3, Land Use Adjacency Guidelines, and implementing Section 1.5, Preserve Management Recommendations of the City's MSCP Subarea Plan.

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The proposed project must be superimposed onto a map with the biological resources. The area covered by each biological resource, including the boundaries of the MHPA, if applicable, and the proposed area of impact to each resource by the proposed development must be presented in both a graphic and tabular form in the Biological Survey Report.

Impacts to wetland habitat require a deviation from the wetland regulations as outlined in Section IV.B. Wetland impacts may only be considered pursuant to one of the three following options:

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A. ~~Essential Public Projects (EPP) Analysis~~

~~The project must be an EPP (e.g., circulation element road, trunk sewer, water main) that will service the community at large and not just a single development project or property. The project must meet the definition of an EPP as identified in Section IV.(1)(B)(i-iv) and must be essential in both location and need. If the City has options on the location of an EPP, the City should not knowingly acquire property for an EPP which would impact wetlands.~~

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~~The proposed project and all biological alternatives, both practicable and impracticable shall be fully described and analyzed in an appropriate CEQA document. Alternatives to the proposed project shall be comprehensively included in the CEQA document (e.g., Mitigated Negative Declaration) and/or the biological technical report for the CEQA document. Alternatives must include the following: 1) a no project alternative; 2) a wetlands avoidance alternative, including an analysis of alternative sites irrespective of ownership; and 3) an appropriate range of substantive wetland impact minimization alternatives. Public review of the environmental document must occur pursuant to the provisions of CEQA. Projects proposing to utilize this deviation section of the ESL after initial CEQA public review must include the new information and recirculate the CEQA document.~~

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~~The potential impacts to wetland resources shall be minimized to the maximum extent practicable and the project shall be the least environmentally damaging practicable biological alternative considering all the technical constraints of the project (e.g., roadway geometry, slope stability, geotechnical hazards, etc). Recognizing the wetland resources involved, minimization to the maximum extent practicable may include, but is not limited to, adequate buffers and/or designs that maintain full hydrologic function and wildlife movement (e.g., pipeline tunneling, bridging, Arizona crossings, arch culverts). The project applicant will solicit input from the U.S. Fish and Wildlife Service and the California Department of Fish and Game (i.e., Wildlife Agencies) prior to the first public hearing.~~

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~~All impacts shall be mitigated according to the requirements of Table 2a and the project shall not have a significant adverse impact to the MSCP.~~

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B. ~~Economic Viability Option Analysis~~

~~Applicant shall disclose and provide all information for the City to determine whether the deviation is necessary to achieve an economically viable use of the property, including all of the following required information:~~

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1. A range of biological alternatives that include the no project alternative, a wetlands avoidance alternative, and alternative(s) that show substantive minimization of impacts to wetlands.

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2. The date the *applicant* purchased or otherwise acquired the property and from whom.

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3. The purchase price and the documentary transfer tax paid by the *applicant* for the property. The *applicant* must provide for an appraisal to establish whether the purchase price was appropriate given market value at the time of purchase. The appraisal shall be prepared by an outside appraiser with recent experience in the type of appraisal being requested, and supervised by the City of San Diego Real Estate Assets Department. The *applicant* will deposit monies into a special fund established by the City to hire, supervise and pay for the appraisal and associated City staff costs. The City will use a revolving list of qualified outside appraisers to prepare appraisals. All appraisals must be prepared by an appraiser licensed in the State of California and be in compliance with current Uniform Standards of Professional Appraisal Practice. All appraisers considered for selection will be required to fully disclose their employment history prior to selection. Any communication between the *applicant* and the appraiser shall occur only in the presence, which includes conference calls, of designated City staff. City staff shall respond to all third party requests within 30 calendar days. For the purposes of this section, *applicant* shall include the *applicant's* employees and shall not include the *applicant's* consultants, design professionals, contractors, and subcontractors. Comparable land values used for this purpose should have similar restrictions, to the maximum extent possible, to those on the property as identified in 1(d) below.

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The final complete appraisal shall be available to the City decision-maker and interested public prior to the discretionary hearing. An appraisal summary statement shall be provided to the City decision-maker for the discretionary hearing.

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4. The general plan, zoning, or similar land use designations applicable to the property at the time the *applicant* acquired it, as well as any changes to these designations that occurred after acquisition.

5. Any development restrictions or other restrictions on use, other than government regulatory restrictions described in (d) above, that

applied to the property at the time the *applicant* acquired it, or which have been imposed after acquisition.

6. Any change in the size of the property since the time the *applicant* acquired it, including a discussion of the nature of the change, the circumstances and the relevant dates.
7. A discussion of whether the *applicant* has sold, leased, or donated a portion of or interest in, the property since the time of purchase indicating the relevant dates, sales prices, rents, and nature of the portion or interests in the property that were sold or leased.
8. Any title reports, litigation guarantees or similar documents in connection with all or a portion of the property.
9. Any offers to buy all or a portion of the property which the *applicant* solicited or received, including the approximate date of the offer and offered price.
10. The *applicant*'s costs associated with the ownership of the property, annualized to the extent feasible, for each of the years the *applicant* has owned the property, including property taxes, property assessments, debt service costs (such as mortgage and interest costs), and operation and management costs.
11. Any rent received from the leasing of all or a portion of the property and any income generated by the use of all or a portion of the property over years of ownership of the property. If there is any such income to report, it should be listed on an annualized basis along with a description of the uses that generate or has generated such income.
12. Topographic, vegetative, hydrologic and soils information prepared by a qualified professional, which identifies the extent of the wetlands on the property. ← - - - -
13. As required per CEQA and/or the 404 b(1) guidelines under the Clean Water Act, an analysis of the economic viability of each of the alternatives required by B.I.a., and an assessment of the economic viability of the project compared to the alternatives which takes into account all project costs, including mitigation for direct, indirect, and cumulative wetland impacts. The analysis of alternatives shall include an assessment of how each alternative will impact all wetlands and environmentally sensitive lands adjacent to and within the overall project plan area.

The economic information shall be reviewed by City staff and outside economic consultant, and the City Council shall consider findings that all economically viable use of a property will be removed with strict application of the ESL.

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The application for an economic viability determination shall be reviewed by City Staff, in consultation with a professional outside economic consultant. The economic consultant will provide an opinion to the City on whether any of the CEQA and/or 404 b(1) alternatives that avoid and minimize wetland impacts provide economically viable use of the subject property. The City Real Estate Asset Department will select a qualified outside economic consultant to develop an economic viability analysis. Any communication between the applicant and the economic consultant shall occur only in the presence, which includes conference calls, of designated City staff. The applicant will deposit monies into a special fund established by the City to hire, supervise and pay for the economic viability analysis and associated City staff costs. All consultants considered for selection will be required to fully disclose their employment history. The economic viability analysis must include an analysis of the project's cost burden (including all mitigation costs associated with the project), a residual land value analysis, market absorption and fiscal impacts analysis. City Manager recommendations to the decision maker shall discuss the economic viability information and professional opinion of the economic consultant, and reflect the independent judgment of the Mayor and/or Appointed Designee.

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Pursuant to the Public Records Act (California Government Code section 6250, et seq.), the full economic viability findings, City Manager recommendations, and the economic consultant's professional opinion, including summary documentation provided by the economic consultant that is not proprietary ("trade secret") shall be available to the City decision-maker and interested public prior to the discretionary hearing. A summary report of the economic viability findings, City Manager recommendations, and professional opinion of the economic consultant shall be provided to the City decision-maker for the discretionary hearing.

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The project mitigation must conform to Table 2a. It is not the intent of the wetland deviation process to be used to reduce or eliminate mitigation as required by the City's Biology Guidelines. Any project that proposes less than full mitigation compliance must include supporting information as part of the economic viability determination and receive written concurrence from the Wildlife Agencies prior to release of the environmental document for public review. For projects providing mitigation in accordance with the City's Biology Guidelines, the project applicant will solicit input from the U.S. Fish and Wildlife Service and the California Department of Fish and Game (i.e., Wildlife Agencies) prior to the first public hearing.

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C. Biologically Superior Option Analysis

Use of the Biologically Superior option may be requested to achieve a superior biological result which would provide a net increase in quality and viability (functions and value) and long term biological benefit. The proposed project, a no project alternative, a wetlands avoidance alternative, and a biologically superior alternative shall be fully described and analyzed in an appropriate CEQA document. The CEQA document must fully analyze and describe the rationale for why the biologically superior option (this could be the proposed project) would result in the conservation of a biologically superior resource compared to strict compliance with the provisions of the ESL. Public review of the environmental document must occur pursuant to the provisions of CEQA. Projects proposing to utilize this deviation section of the ESL after initial CEQA public review must include the new information and recirculate the CEQA document.

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The wetland resources being impacted by the project shall be of low biological quality. Low biological quality will be specific to the resource type impacted (e.g., vernal pools, non-tidal-salt marsh, riparian, and unvegetated channels), and shall be determined by the criteria identified below:

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(1) Criteria to determine biological quality of all wetland types include, but are not limited to, the following:

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- a. use of the wetland by federal and/or state endangered, threatened, sensitive, rare and/or other indigenous species;
- b. diversity of native flora and fauna present (characterizations of flora and fauna must be accomplished during the proper season, and surveys must be done at the most appropriate time to characterize the resident and migratory species);
- c. enhancement or restoration potential;
- d. habitat function/ecological role of the wetland in the surrounding landscape, considering
 - the current functioning of the wetland in relation to historical functioning of the system, and
 - rarity of the wetland community in light of the historic loss and remaining resource;
- e. connectivity to other wetland or upland systems (including use as a stopover or stepping stone by mobile species), considering
 - proximity of the wetland resource to larger natural open spaces, and
 - long-term viability of resource, if avoided and managed;

- f. hydrologic function, considering
 - whether the volume and retention time of water within the wetland is sufficient to aid in water quality improvements, and
 - whether there is significant flood control value or velocity reduction function;
- g. status of watershed considering whether the watershed is partially developed, irrevocably altered, or inadequate to supply water for wetland viability; and
- h. source and quality of water, considering
 - whether the urban runoff is from a partially developed watershed, and
 - whether the water source is in part or exclusively from human-caused runoff which could be eliminated by diversion.

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(2) Additional habitat-specific factors, requirements, and/or examples (by habitat type) to determine biological quality include the following.

Vernal Pools

- a. Characterizations of vernal pool flora and fauna must be accomplished during the proper seasons. Surveys must be done between December and May to ensure adequate characterization of the vernal pools. Adequate surveys should be done to determine ponding and vernal pool flora and fauna. Surveys for fairy shrimp must be done in accordance with current U.S. Fish and Wildlife Service fairy shrimp survey protocol.
- b. Timing of the first rainfall and subsequent filling of the pools should be determined during the evaluation process. Rainfall and ponding should be monitored throughout the wet season.

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Endangered, threatened, and sensitive species to consider include: *Brodiaea orcuttii* (when within vernal pools and/or their watershed), *Downingia cuspidata*, *Eryngium aristulatum* ssp. *parishii*, *Myosurus minimus* var. *apus*, *Navaretia fossalis*, *Orcuttia californica*, *Pogogyne abramsii*, *Pogogyne nudiuscula*, *Streptocephalus woottoni*, and *Branchinecta sandiegonensis* (when within vernal pools).

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- c. Determination of habitat function can include an assessment of number of pools with a cumulatively small amount of habitat (pool surface area) relative to other nearby vernal pool complexes (e.g., an

isolated complex with two small pools would be considered lower quality than a complex adjacent to the MHPA with ten pools).

- d. Restoration potential should include an analysis of compaction of watershed, presence of historic pools, and status of hardpan or clay substrate.

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Salt Marsh, Salt Panne, and Mudflats

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- a. Wetlands with either surface or sub-surface tidal influence (e.g., coastal salt marsh, salt panne and mudflats) will never be considered low quality and are excluded from the deviation process for a biologically superior alternative. A deviation for a biologically superior option must not be granted for tidally influenced wetlands.
- b. Water and soil salinity testing should be conducted in areas of questionable tidal influence. Evaluations of tidal influence must include the highest spring and neap tides.
- c. Low feasibility for restoration of tidal influence should be determined based on distance from existing tidal influence (e.g., > 1/4 mile).
- d. Determine whether there is little or no function as coastal salt marsh, salt panne, or mudflat habitat, including habitat for migratory birds.

Freshwater, Riparian, or Brackish Wetlands

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- a. Tidally influenced brackish wetlands will never be considered low quality and are excluded from the deviation process for a biologically superior option.
- b. Hydrologic evaluations of the effects of any impacts on the upstream and downstream biota and flooding must be conducted as part of the review process.

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Wetland quality shall be thoroughly analyzed in the project's biological technical report using the criteria listed above and based on best available scientific information. Wetland quality determinations shall be a discretionary action made on a case-by-case basis, with not all low-quality criteria required to make a low quality determination. Alternatively, the presence of any factor to any significant amount or degree may preclude a determination of low quality. All criteria shall be carefully considered when making a wetland quality determination. The City will seek input and concurrence from the Wildlife Agencies on this determination, and will use the input to develop the biologically superior option (this could be the proposed project) described and analyzed in the CEQA document.

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During the CEQA process, the City's Wetlands Advisory Board shall review information provided by the applicant and provide an opinion to City staff and the City Manager on whether a wetland is of low quality. The opinion of the Wetlands Advisory Board shall be included in the City Manager report to the City decision maker; however, the project process should not be delayed if the Wetlands Advisory Board does not provide a response or cannot provide a response due to lack of quorum.

For a project to proceed under the deviation process for the biologically superior option, the Wildlife Agencies' concurrence with the deviation findings is necessary. The concurrence shall be in writing and be provided prior to or during the public review of the CEQA document in which the biologically superior option has been fully described and analyzed.

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TABLE 1:
Summary of Biological Survey Requirements

RESOURCE	SURVEY REQUIREMENTS	
	Inside MHPA	Outside MHPA
Vegetation		
—Uplands	Confirm/Revise MSCP mapping.	Confirm/Revise MSCP mapping.
—Wetlands	Delineate wetlands per City definition	Delineate wetlands per City definition
Covered spp.¹		
—Listed spp —(e.g. gnatcatcher)	Focused survey per protocol	Per MSCP conditions of coverage ²
Narrow endemic —(e.g. S.D. Thornmint)	Focused survey per protocol	Focused survey per protocol
Other —(e.g., SD horned lizard)	Survey as necessary to comply with sitting citing requirements as outlined in Section II.A.2 of these Guidelines.	Per MSCP conditions of coverage ²
Non-Covered spp.¹		
Listed spp —(e.g. pacific pocket mouse)	Focused survey per protocol	Focused survey per protocol
“Other Sensitive Species” —(e.g. little mouse tails)	Case-by-case determination depending on the spp.	Case-by-case determination depending on the spp.

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1. Based upon the MSCP mapping, site specific surveys, the NDDB records, previous EIRs and biological surveys and/or discussion with the wildlife agencies, the potential for listed species, narrow endemic and CEQA sensitive species will be determined. Where there is a reasonable likelihood that one of these species exists, surveys will follow the above requirements.

2. Survey as necessary to conform with Appendix A of the City of San Diego MSCP Subarea Plan (March 1997).

3. “Other Sensitive Species”. Those other species that are not listed by federal and/or state agencies and/or not covered by the MSCP and to which any impacts may be considered significant under CEQA.

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B. Identification of the Mitigation Program

The Biological Survey Report will ~~provide~~ include a program ~~that~~ which identifies a plan of action to reduce significant impacts to below a level of significance. The Mitigation Program will consist of three required elements: 1) Mitigation Element, 2) Protection and Notice Element, and 3) Management Element. Each of these elements are further described below. This mitigation program must be incorporated in the permit conditions and/or subdivision map, the construction specifications for public projects, and shown on the construction plans as appropriate.

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The Biological Survey Report ~~should~~ must also provide evidence that the nature and extent of the mitigation proposed is reasonably related (nexus) and proportional to the adverse biological impacts of the proposed development.

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1. Mitigation Element

Mitigation must be determined on a case-by-case basis. Mitigation refers to actions to help sustain the viability and persistence of biological resources, as exemplified below. Mitigation will consist of actions that either compensate for impacts by replacing or providing substitute habitats, or rectify the impact by restoring the affected habitats. The requirements of the mitigation will be based on the type and location of the impacted habitat, and additionally for uplands, on the location of the mitigation site. The Mitigation Element will consist of a discussion of the amount (i.e., quantity) and the type (i.e., method) of mitigation.

The following guidelines are provided to achieve consistency and equity among projects. Mitigation for specific projects may differ depending on site-specific conditions as supported by the project-level analysis.

a. Mitigation for Wetlands Impacts

The ESL regulations require that impacts to wetlands be avoided. Unavoidable impacts should be minimized to the maximum extent practicable, and mitigated as follows:

As part of the project-specific environmental review pursuant to CEQA, all unavoidable wetlands impacts (both temporary and permanent) will need to be analyzed and mitigation will be required in accordance with Table 2a and/or Table 2b; mitigation should be based on the impacted type of wetland habitat and project design. Mitigation should prevent any net loss of wetland functions and values of the impacted wetland.

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For the Biologically Superior option the project and proposed mitigation shall include avoidance, minimization, and compensatory measures which would result in a biologically superior net gain in overall function and values of (a) the type of wetland

October 2008

resource being impacted and/or (b) the biological resources to be conserved; and the Biologically superior mitigation shall include either:

- (1) Standard mitigation as required per Table 2a including wetland creation or restoration of the same type of wetland resource that is being impacted) that results in high quality wetlands; AND a biologically superior project design whose avoided area(s) (i) is in a configuration or alignment that optimizes the potential long-term biological viability of the on-site sensitive biological resources, and/or (ii) conserves the rarest and highest quality on-site biological resources (see Figure 2 for an example); or
- (2) Extraordinary mitigation as required per Table 2b for project not consistent with 1 above, preservation (i.e., off-site acquisition), and/or additional restoration or creation of the same type of wetland being impacted that results in higher quality wetlands

Examples of increased function and value include, but are not limited to, an increase in the availability of habitat for native fauna, an increase in native flora diversity, a decrease in invasive species, an increase in ground water recharge, water quality improvements and sedimentation deposition rates. Success criteria using the best currently available information for the particular mitigation habitat shall be required as part of the restoration or creation plan.

Additional Requirements for Vernal Pool Mitigation:

Mitigation for projects impacting vernal pools shall include salvage of sensitive species from vernal pools to be impacted, introduction of salvaged material into restored vernal pool habitat where appropriate (e.g., same vernal pool series), and maintenance of salvaged material pending success of restored vernal pools. Salvaged material shall not be introduced to existing vernal pools containing the same species outside the vernal pool series absent consultation with and endorsement by vernal pool species experts not associated with the project (i.e., independent expert). The mitigation sites shall include preservation of the entire watershed and a buffer based on functions and values; however, if such an analysis is not conducted, there shall be a default of a 100 foot buffer from the watershed.

FIGURE 2

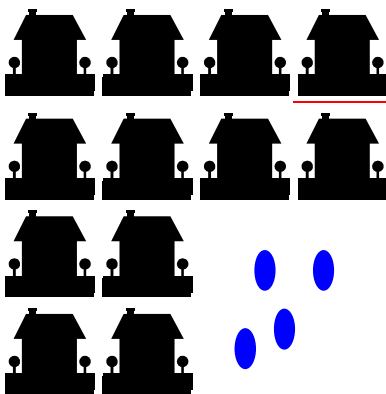
EXAMPLE OF A BIOLOGICALLY SUPERIOR PROJECT DESIGN

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Project Design A – Biologically Superior Project Design

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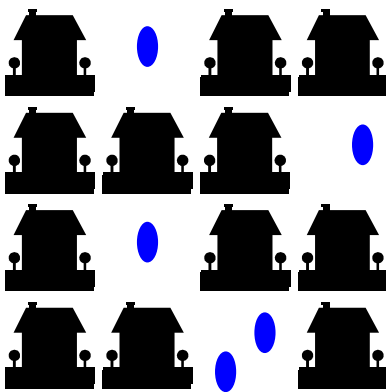


Project Design B – Not a biologically superior project design

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Project Design A has a lower level of edge, the avoided sensitive resource is less fragmented, and the potential for long-term biological viability of the sensitive resource is higher relative to the Project Design B. For projects designed in accordance with Project Design A, use Mitigation Table 2a. For all other project designs, use Mitigation Table 2b.

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 = Sensitive Resource

TABLE 2a:
Wetland Mitigation Ratios

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HABITAT TYPE	MITIGATION RATIO
Coastal Wetlands	
- Salt marsh	4:1
- Salt panne	4:1
Riparian Habitats:	
- Oak riparian forest	3:1
- Riparian forest	3:1
- Riparian woodland	3:1
- Riparian scrub	2:1
- Riparian scrub in the Coastal Overlay Zone	3:1
Freshwater Marsh	2:1
Freshwater Marsh in the Coastal Overlay Zone	4:1
Natural Flood Channel	2:1
Disturbed Wetland	2:1
Vernal Pools	2:1 to 4:1
Marine Habitats	2:1
Eelgrass Beds	2:1

Notes: Any impacts to wetlands must be mitigated “in-kind” and achieve a “no-net loss” of wetland function and values. Mitigation for vernal pools can range from 2:1 when no endangered are present, up to 4:1 when endangered species with very limited distributions (e.g., *Pogogyne abramsii*) are present.

TABLE 2b

Wetland Mitigation Ratios - Biologically Superior mitigation option 2	
HABITAT TYPE	MITIGATION RATIO
Coastal Wetlands (salt marsh, salt panne)	8:1
Riparian Forest or Woodland (oak, sycamore, or willow)	6:1
Riparian Scrub	4:1
Freshwater Marsh	4:1
*Natural Flood Channel	4:1
*Disturbed Wetlands	4:1
Vernal Pools	4:1 to 8:1
Notes: Mitigation must be provided within or adjacent to the MHPA. Any impacts to wetlands must be mitigated "in-kind" and achieve a "no-net loss" of wetland functions and values. Mitigation for vernal pools can range from 2:1 when no endangered species are present, and up to 4:1 when endangered species with very limited distributions (e.g. <i>Pogogyne abramsii</i>) are present. * Preference for these habitats is out-of-kind mitigation with better habitat. In-kind (e.g., NFC for NFC) could be considered where it would clearly benefit sensitive species and results in a biologically superior alternative.	

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The following provides operational definitions of the four types of activities that constitute wetland mitigation under the ESL regulations:

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Wetland creation is an activity that results in the formation of new wetlands in an upland area. An example is excavation of uplands adjacent to existing wetlands and the establishment of native wetland vegetation.

Wetland restoration is an activity that re-establishes the habitat functions of a former wetland. An example is the excavation of agricultural fill from historic wetlands and the re-establishment of native wetland vegetation.

Wetland enhancement is an activity that improves the self-sustaining habitat functions of an existing wetland. An example is removal of exotic species from existing riparian habitat.

Wetland enhancement and wetland acquisition focus on the preservation or the improvement of existing wetland habitat and function, and do not result in an increase in wetland area; therefore, a net loss of wetland may result. As such, acquisition and/or enhancement of existing wetlands may be considered as partial

mitigation only, for any balance of the remaining mitigation requirement after restoration or creation if wetland acreage is provided at a minimum of a 1:1 ratio. For permanent wetland impacts that are unavoidable and minimized to the maximum extent feasible, mitigation shall consist of creation of new, in-kind habitat to the fullest extent possible and at the appropriate ratios. In addition, unavoidable impacts to wetlands located within the Coastal Overlay Zone shall be mitigated on-site, if feasible. If on-site mitigation is not feasible, then mitigation shall occur within the same watershed. All mitigation for unavoidable wetland impacts within the Coastal Overlay Zone shall occur within the Coastal Overlay Zone.

For example, satisfaction of the mitigation requirement may be considered for a 3:1 mitigation ratio, with two parts consisting of acquisition and/or enhancement of existing acres, and one part restoration or creation.

Restoration of illegally filled historic wetland areas will not be considered for mitigation, and may result in code enforcement actions and/or may require restoration as a condition of project approval. All restoration proposals should evaluate the reason for the historic wetland loss (e.g., placement of fill, changes in upstream or groundwater hydrology), the approximate date of the loss, and to the maximum extent possible, provide a determination as to whether the historic loss was legally conducted based upon the regulatory requirements at the time of the loss and the property ownership at the time of the loss.

The mitigation ratios, set forth in Table 2, in combination with the requirements for no-net-loss of functions and values and in-kind mitigation, are adequate to achieve the conservation goals of the City's MSCP Subarea Plan for wetland habitats and the covered species which utilize those habitats.

Wetland mitigation required as part of any federal (404) or state (1601/1603) wetland permit will supersede and will not be in addition to any mitigation identified in the CEQA document for those wetland areas covered under any federal or state wetland permit. Wetland habitat outside the jurisdiction of the federal and state permits will be mitigated in accordance with the CEQA document for those wetland areas covered under any federal or state wetland permit. Wetland habitat outside the jurisdiction of the federal and state permits will be mitigated in accordance with the CEQA document.

TABLE 2:
Wetland Mitigation Ratios

HABITAT TYPE	MITIGATION RATIO
Coastal Wetlands	
Salt marsh	4:1
Salt panne	4:1
Riparian Habitats:	
Oak riparian forest	3:1
Riparian forest	3:1
Riparian woodland	3:1
Riparian scrub	2:1
Riparian scrub in the Coastal Overlay Zone	3:1
Freshwater Marsh	2:1
Freshwater Marsh in the Coastal Overlay Zone	4:1
Natural Flood Channel	2:1
Disturbed Wetland	2:1
Vernal Pools	2:1 to 4:1
Marine Habitats	2:1
eelgrass Beds	2:1

Notes: Any impacts to wetlands must be mitigated "in-kind" and achieve a "no-net-loss" of wetland function and values. Mitigation for vernal pools can range from 2:1 when no endangered are present, up to 4:1 when endangered species with very limited distributions (e.g., *Pogogyne abramsii*) are present.

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b. Mitigation for Upland Impacts

The City of San Diego has developed a MSCP Subarea Plan which identifies the conservation and management of a City-wide system of interconnected open space. The habitat based level of protection afforded by the implementation of the MHPA is intended to meet the mitigation obligations of Covered Species and most likely the majority of species determined to be sensitive pursuant to the CEQA review process. The City has adopted a policy that development should be conserved. While this would result in the depletion (net loss) of the existing inventory of sensitive biological resources, the successful implementation of the MSCP would retain the long-term viability, and avoid further extirpation of many of San Diego's sensitive species. Therefore, for upland habitats, measures that contribute towards overall implementation of the MSCP may be considered as mitigation, even when a net loss of the existing inventory of

sensitive biological resources occurs. These methods, described below, allow for greater flexibility in mitigation methodology, including off-site acquisition, on-site preservation, habitat restoration and in limited cases, monetary compensation.

(1) Upland Impacts Within the MHPA (Outside the Coastal Overlay Zone)

Where the MHPA covers more than 75% of a premise, development will be limited to that amount necessary to achieve a development area of 25% of the premise, based upon the development area regulations of the OR-1-2 Zone (see Section II.B.1). No mitigation will be required for the direct impacts to uplands associated with this development area.

City linear utility projects (i.e., sewer and water pipelines) are exempt from the development area limitation but need to mitigate all direct impacts in accordance with Table 3. Likewise, all projects processed through a deviation would need to provide mitigation in accordance with Table 3 for impacts beyond the allowable development area of the OR-1-2 Zone.

(2) Upland Impacts Outside of the MHPA (Outside the Coastal Overlay Zone)

Where the MHPA covers less than 75% of a premises, no development will be allowed within the MHPA. Mitigation, based upon the ratios set forth in Table 2, will be required for all significant biological impacts. These ratios are based upon the rarity of the upland resources as characterized by one of four Habitat Tiers. Due to the critical nature and high biological value of the MHPA, mitigation should be directed to the MHPA. Thus, a lower mitigation ratio may be applied for projects that propose to mitigate inside of the MHPA. Lands outside the MHPA containing narrow endemic species will be treated as if the land was inside the MHPA for purposes of mitigation.

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The mitigation requirement would be evaluated against any portion of the premise within the MHPA that is left undeveloped as a condition of the permit. If the portion of the premise containing the MHPA is equal to or greater than the mitigation requirement, then no further mitigation would be required. Any acreage of the mitigation requirement not satisfied on-site will be required to be mitigated off-site.

Thus, by way of example, if a project is impacting 60 acres of coastal sage scrub (Tier II) outside of the MHPA and preserving 40 acres of viable habitat on-site within the MHPA, then the remaining uncompensated acreage is 20 acres $[60 \text{ ac} - (1:1 \times 40 \text{ ac}) = 20 \text{ ac}]$. This would require the preservation of 20 acres $(20 \times 1:1)$ of mitigation within the MHPA, or 30 acres $(20 \times 1.5:1)$ outside (see Figure 2).

Mitigation for all Tier I impacts must be in-tier, but may be out-of-kind. For impacts to Tier II, IIIA or IIIB habitats, the mitigation could (1) include any Tier I, II, IIIA or IIIB habitats (out-of-kind) within the MHPA, or (2) occur outside of the MHPA within the affected habitat type (in-kind).

Any outstanding mitigation may be satisfied by one, or a combination, of the following methods, or other methods determined on a case-by-case basis to reduce impacts to below a level-of-significance. *In all cases, mitigation sites must have long-term viability.* Viability will be assessed by the connectivity of the site to larger planned open space, surrounding land uses, and sensitivity of the MHPA resources to environmental change.

**TABLE 3:
 UPLAND MITIGATION RATIOS**

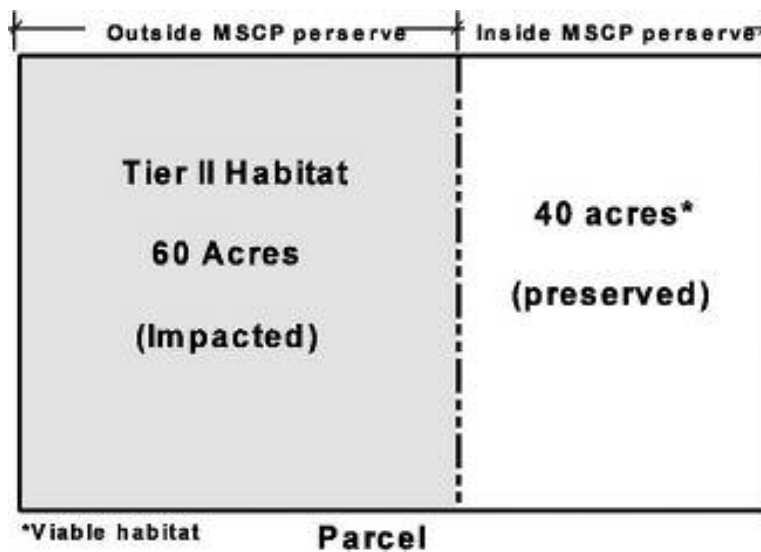
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TIER	HABITAT TYPE	MITIGATION RATIOS			
TIER I (rare uplands)	Southern Foredunes Torrey Pines Forest Coastal Bluff Scrub Maritime Succulent Scrub Maritime Chaparral Scrub Oak Chaparral Native Grassland Oak Woodlands	Location of Impact	Location of Preservation		
			Inside*	Inside	Outside
				2:1	3:1
				1:1	2:1
TIER II (uncommon uplands)	Coastal Sage Scrub (CSS) CSS/Chaparral	Location of Impact	Location of Preservation		
			Inside*	Inside	Outside
				1:1	2:1
				1:1	1.5:1
TIER III A: (common uplands)	Mixed Chaparral Chamise Chaparral	Location of Impact	Location of Preservation		
			Inside*	Inside	Outside
				2:1	3:1
				1:1	2:1
TIER III B: (common uplands)	Non-Native Grasslands	Location of Impact	Location of Preservation		
			Inside*	Inside	Outside
				1:1	1.5:1
				0.5:1	1:1
TIER IV: (other uplands)	Disturbed Land Agriculture Eucalyptus Woodland Ornamental Plantings	Location of Impact	Location of Preservation		
			Inside*	Inside	Outside
				0:1	0:1
				0:1	0:1

Notes:

- For all Tier I impacts, the mitigation could (1) occur within the MHPA portion of Tier I (in-kind) or (2) occur outside of the MHPA within the affected habitat type (in-kind)
 - For impacts to Tier II, III A and III B habitats, the mitigation could (1) occur within the MHPA portion of Tiers I – III (out-of-kind) or (2) occur outside of the MHPA within the affected habitat type (in-kind).
- * No mitigation would be required for impacts within the base development area (25%) occurring inside the MHPA. Mitigation for any impacts from development in excess of the 25% base development area for community plan public facilities or for projects processed through the deviation process would be required at the indicated ratios.

FIGURE 2.3
MITIGATION EXAMPLE



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MITIGATION:

1. On-site preservation:
 $[60 \text{ acres} - (40 \text{ acres} \times 1:1)] = 20 \text{ acres}$ 20 acres uncompensated
2. Off-site preservation:
 $(20 \text{ acres} \times 1:1) = 20 \text{ acres}$ Inside MSCP Preserve
or
 $(20 \text{ acres} \times 1.5:1) = 30 \text{ acres}$ Outside MSCP Preserve

In general, areas within the MHPA are considered to have long-term viability. Areas outside of the MHPA proposed for mitigation may require additional biological studies to support the determination of long-term viability.

(3) Upland Impacts Within the Coastal Overlay Zone

Within the Coastal Overlay Zone, encroachment into steep hillsides containing sensitive biological resources shall be avoided to the maximum extent possible, and permitted only when in conformance with the encroachment limitations set forth in Section 143.0142(a)(4).

Mitigation for permitted impacts shall be required pursuant to Section III.B.1.b(1) and (2) above.

c. Mitigation Methods

- (1) Off-site Acquisition: The purchase or dedication of land with equal or greater habitat value can be considered as a method of mitigation. Impacts within the City of San Diego must be mitigated within the City of San Diego's jurisdiction, preferably in the MHPA.

"Mitigation Banks" are privately or publicly held lands that sell mitigation credits instead of fee title for habitat areas on which a conservation easement has been placed. Under this method, a large site can be acquired over time by multiple projects requiring small mitigation needs. Purchase of areas of "credits" from an established bank can be acceptable, as long as the required acreage is subtracted from the remaining credits in the bank and is not available for future projects. All banks must have provisions approved for long-term management, can be part of a regional habitat preserve system, and upon request can provide an updated record of the areas (credits) purchased from the bank and those that are remaining.

New mitigation banks must be established pursuant to the "Official Policy on Conservation Banks" (California Resource Agencies 1995) and the "Supplemental Policy Regarding Conservation Banks within the NCCP Area of Southern California" (USFWS 1996). In general, the purchase of credits from mitigation banks located outside of the City of San Diego's jurisdiction will not be allowed.

- (2) On-Site Preservation: The following provides guidance for evaluating the acceptability of on-site preservation as mitigation with respect to the long-term viability of the site:
- (a) Inside MHPA: For premises that straddle the MHPA, the on-site preservation of lands inside the MHPA, outside of brush management zones, are considered to have long-term viability due to their connectivity to larger planned open space and their contribution toward regional biodiversity preservation. Areas containing brush management Zone 2 will be considered impact neutral (not considered an impact and not considered acceptable as a mitigation area); see Figure 3. *Land inside the MHPA, outside of brush management zones, will be considered acceptable as*

mitigation and no additional studies to support this determination will be required. [Note: Lands outside the MHPA containing narrow endemic species would be considered acceptable as mitigation and would be treated as if the land was inside the MHPA for purposes of mitigation].

- (b) Outside MHPA: The on-site preservation of lands outside the MHPA may be considered acceptable as mitigation provided they have long-term biological value. Long-term biological value should be assessed in terms of connectivity to larger areas of planned open space, and any potential current or future indirect impacts associated with the urban interface. As indicated above, areas containing brush management Zone 2 will be considered “impact neutral” (not considered an impact and not considered as acceptable as a mitigation area).
- (i) Connectivity: Isolated habitat patches have been shown to lack the diversity and resilience of connected systems (Noss 1983, Soule et al. 1988, Temple 1983, Wright and Hubbell 1983). In most cases, the species first to extirpate (disappear) from these isolated areas are rare species that do not adapt well to human influenced environments. Unfortunately, these species are those targeted for conservation by the MSCP.

Areas preserved on-site, but outside of the MHPA, will only generally be considered to be acceptable as mitigation if connected to the MHPA. As a general guideline, areas completely surrounded by development and areas connected by native vegetation of less than 400 feet wide for greater than 500 feet long will be considered isolated, and will not count as mitigation (see Figure 4).

Site-specific studies with field observations which incorporate the best available scientific information and methods would be necessary to provide a basis for any modification to these standards at the project level. Other factors such as topography (steep slopes), major road systems or other large public facility and habitat patch size will also be considered in assessing potential isolation of a site.

Isolated areas may, on a case-by-case basis, be considered for use as mitigation where it can be reasonably demonstrated that the resource can persist in isolation (e.g., narrow endemic species or unique habitats such as vernal pools) or act as “stepping stones” for wildlife movement between portions of the MHPA.

- (ii) Urban Interface: The interface (edge) between native plant communities and human-modified areas are considered to be adverse to many native species. Many wildlife species decrease along the edge of habitat due to detrimental conditions, such as increased parasitism (by species such as the brown-headed cowbird), increased nest predation (by species such as jays, raccoons, opossums, and domestic cats and dogs), and increased competition for nesting areas (by starlings and other non-native exotic species) (Brettingham and Temple 1983, Gates and Gysel 1978, Noss 1993, Temple 1987). Invasion by exotic plants (such as escaped ornamental landscaping) and off-road vehicles also increases along habitat edges (Noss 1983, Alberts et al 1993, Sauvajot and Buechner 1993, Scott 1993). Other factors such as increased noise and night-time lighting may also contribute to the adverse conditions. These conditions are collectively called “edge effects.”

Few studies have attempted to quantify the distance of edge effects. The MSCP Plan indicated that edge conditions range from 200 to 600 feet depending on adjacent land uses. A 1994 article on avian nest success indicates that the most conclusive studies suggest that edge effects are most predominantly documented within fifty meters of an edge (Patron 1994).

FIGURE 3.4
URBAN INTERFACE

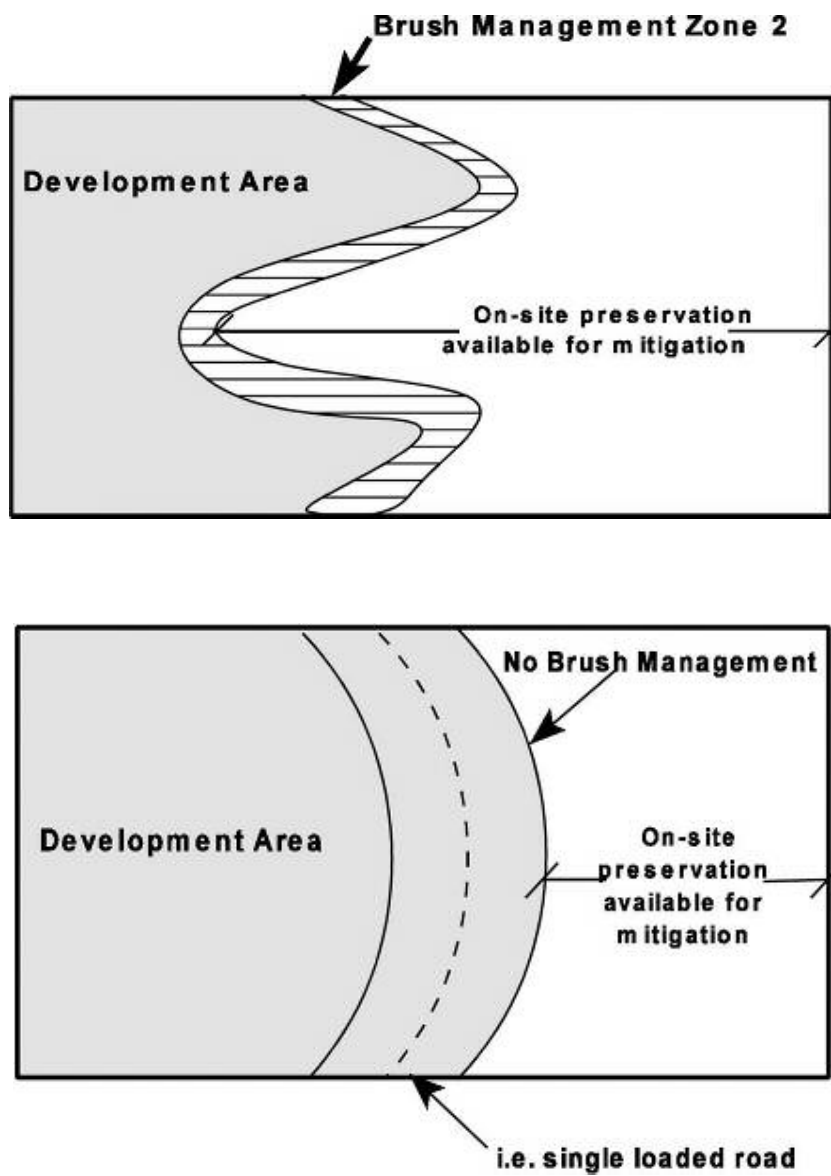
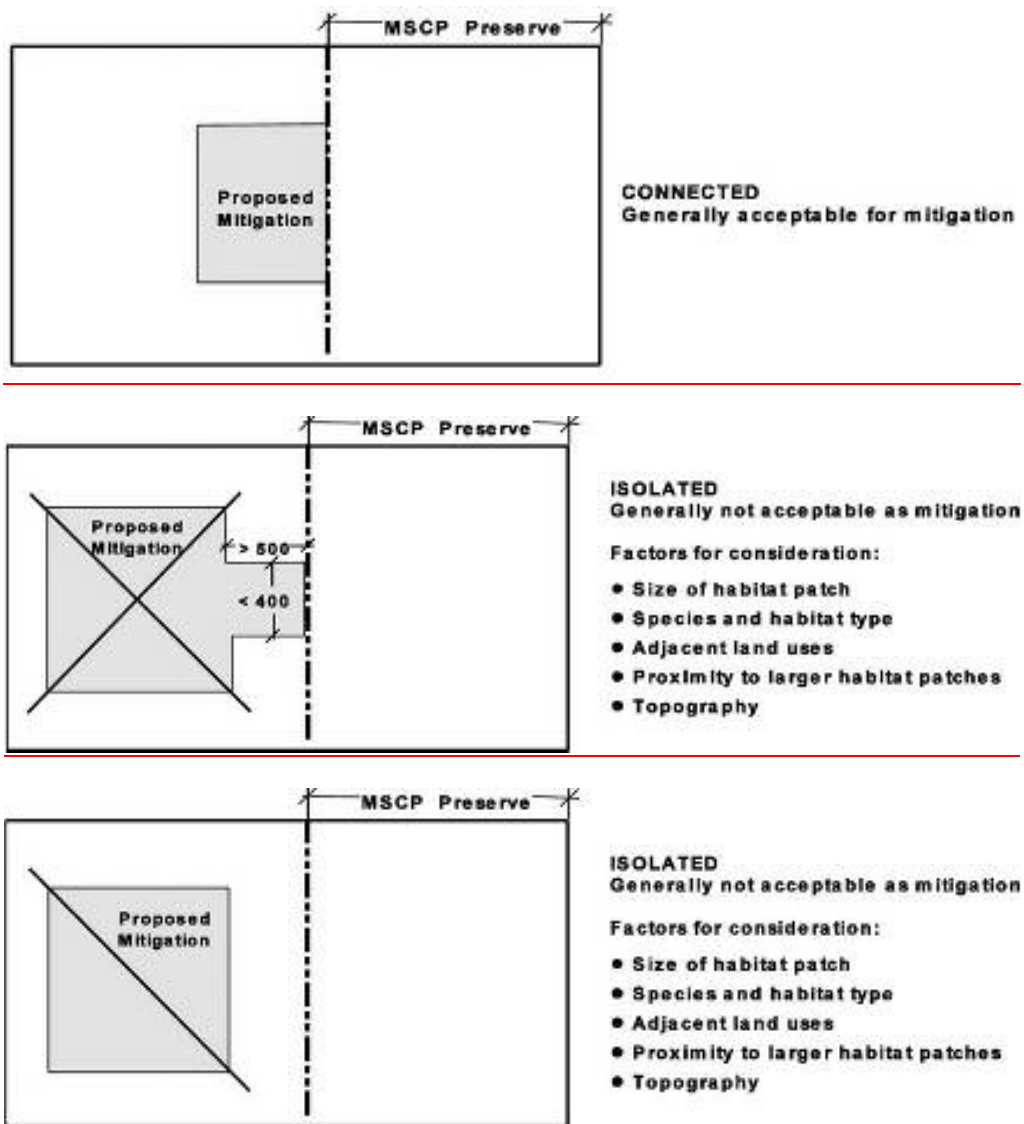


FIGURE 4.5
DETERMINATION OF CONNECTIVITY



- (3) Monetary Compensation: In some cases, developments with small impacts may compensate by payment into a fund used to acquire, maintain and administer the preservation of sensitive biological resources. This fund is only intended to be used for the mitigation of impacts to small, isolated sites with lower long-term conservation value. For purposes of this fund, small is generally considered less than 5 acres, but could, in some cases, be considered up to 10 acres.

Mitigation monies will be deposited in the City of San Diego's Habitat Acquisition Fund (Fund #10571), as established by City Council Resolution R-275129, adopted on February 12, 1990.

Monetary compensation must also include an amount equal to ten percent of the total administrative costs.

Administration of the fund is the responsibility of the City of San Diego's Development Services Department, with cooperation from other City departments including: Park and Recreation (for maintenance), Auditor (for accounting), and Real Estate Assets (for estimates of land cost). Staff costs will not be charged to the fund except to cover appraisal and administrative expenses (from the 10% administrative fee).

The process for utilizing this type of mitigation is as follows:

Staff members from the Development Services Department will request from the Real Estate Assets Department an estimate of average land costs of the focused acquisition area closest to the project site. Focused acquisition areas have been identified by the MSCP as large areas of habitat critical for biodiversity preservation and the success of the MSCP (e.g., Carmel Mountain, Del Mar Mesa, East Elliott, Western Otay Mesa). The Real Estate Assets Department will base the estimate on previous appraisals and comparable land costs of lands within the focused acquisition area. The applicant will be required to contribute the estimated average per acre land cost multiplied by the mitigation ratio plus the additional amount for administration.

A two million dollar "cap" has been placed on the amount of money that may accumulate in the Habitat Acquisition Fund. The purpose of this cap is to insure that funds are spent in a timely manner. After the cap has been reached, no other funds may be accepted until the money is expended.

1. Species Specific Mitigation

In general, it is accepted that securing comparable habitat at the required ratio will mitigate for the direct impact to most sensitive species. While this is true for species with wide geographic distributions and/or large territory sizes, species with very limited geographic ranges (narrow endemic species) would require additional efforts designed to protect these species. A list of narrow endemic species is provided on ~~page 3~~, ~~Section I~~ of these Guidelines.

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The specific actions necessary to protect narrow endemics must be determined on a case-by-case basis. Transplantation and/or soil salvage are examples of acceptable mitigation methods for some of these species. Fencing, signage and management are other examples of mitigation. The Mitigation Program in the Biological Program in the Biological Survey Report should identify all specific actions related to the mitigation of these narrow endemic species, in addition to any other requirements necessary for the mitigation of their habitats.

In addition to the protection of narrow endemics, certain species are only considered adequately conserved as part of the MSCP (i.e., covered species) if translocation/restoration of the species is provided at the project-level (see Table 3-5 of MSCP Plan and Section 1.3 of the City's Subarea Plan). These species are *Ceanothus verrucosus* (wart-stemmed ceanothus), *Opuntia parryi* var. *serpentine* (snake cholla), *Speotyto cunicularia hypugaea* (burrowing owl), and restoration/transplantation of any impacted habitat of the *Camylorhynchus brunneicapillus* (coastal cactus wren). The first ~~three~~ two of these species are plants and may be transplanted, or incorporated into any revegetation plan proposed for the site. Restoration of impacted coastal cactus wren habitat shall include salvage and transplantation of *Cylindropuntia californica* var. *californica* (Snake cholla), *Cylindropuntia prolifera* (Coast cholla), *Dudleya* spp. (Live-forevers), *Ferocactus viridescens* (Barrel cactus), *Mammillaria dioica* (Fish-hook cactus), *Opuntia littoralis* (Coastal prickly pear), *Opuntia oricola* (Chaparral prickly pear), *Yucca whipplei* (Our Lord's candle), *Yucca schidigera* (Mojave yucca) to an on-site or off-site restoration site or a receiver site approved by the City. Translocation of burrowing owls should follow the passive relocation protocols ~~as specified in the CDFG report on burrowing owls~~ approved by the CDFG.

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Species specific analysis for sensitive species not covered by the MSCP may be required as part of the CEQA process. It is expected that the majority of CEQA sensitive species not covered by the MSCP will be adequately mitigated through the habitat based mitigation described in Section B.1.a and B.1.b of these guidelines. A rare circumstance may arise, however, when mitigation actions specific to a particular species may be required. The project-level biological survey report will justify why such actions are necessary in light of the habitat level protection provided by the MSCP.

2. Protection and Notice Element The Mitigation Program must provide assurances that areas offered for mitigation or remainder areas in the OR-1-2 Zone not developed, but indirectly impacted by the proposed development will be adequately protected from future development. Additionally, adequate notice must be recorded against the title of the property to memorialize the status of mitigation and remainder areas. The Protection Element will identify the specific actions incorporated into the project to protect any areas offered as mitigation. The following methods are considered to adequately protect mitigation and remainder areas:

a. Dedication

Dedication in fee title to the City is the preferred method of protecting mitigation areas. It is the City's policy to accept lands being offered for dedication unless certain circumstances prohibit the acceptance, such as the presence of hazardous materials, title problems, unpaid taxes or unacceptable encumbrances including liens. The City Manager or designee must recommend, and the City Council must accept, all proposed dedications on a case-by-case basis. Dedication of mitigation sites to other conservation entities, such as the U.S. Fish and Wildlife Service, Nature Conservancy, Trust for Public Lands, or the Environmental Trust, may also be permissible, if acceptable to the City Manager or designee.

b. Conservation Easement

In lieu of dedication in fee title, mitigation or remainder areas may be encumbered by a conservation easement. Conservation easements relinquish development rights to another entity. The conservation easement would be in the favor of the City (or other conservation entity, if acceptable to the City Manager or designee) with the U.S. Fish and Wildlife Service and the California Department of Fish and Game named as third party beneficiaries. The language of the easement would identify the mitigation or remainder area and provide that no clearing, grubbing, grading or disturbance of the native vegetation would be allowed within the area.

c. Covenant of Easement

In lieu of dedication in fee title, or granting of a conservation easement, where a project has utilized all of its development area potential as allowed under the OR-1-2 Zone, then as a condition of permit approval, a covenant of easement would be required to be recorded against the title of the property for the remainder area, with the U.S. Fish and Wildlife Service and the California Department of Fish and Game named as third party beneficiaries. A covenant of easement is a legally binding promise made by the property owner with respect to future use of the land.

Identification of those permissible passive activities and other conditions of the permit would be incorporated into the covenant. The covenant would be recorded against the title of the property and would run with the land. The applicant will allow the City limited right of entry to the remainder area to monitor the applicant's management of the area.

3. Management Element. The Mitigation Program must provide assurances that the mitigation or remainder areas in the OR-1-2 Zone will be adequately managed and monitored in a manner consistent with Section 1.5, Preserve Management of the City's MSCP Subarea Plan. The Mitigation Program should identify how the objectives of the City's MSCP Preserve Management recommendations will be met for the area, as well as provide any additional management recommendations resulting from site-specific information (area specific management directives). The plan must also identify the responsible entity and funding source for the long-term maintenance and management.

- a. Management by the City

In general, the entity that holds the fee title or is granted a conservation easement will be responsible for the management of the mitigation area. If the City of San Diego is the responsible party, then upon acceptance of the property, the area will be managed in accordance with the MSCP Habitat Management Plan as modified by the area specific management directives. The project applicant would not be responsible for future monitoring reports or maintenance activities.

For lands granted in fee title to the City or where the City would have land management responsibility: If in-perpetuity wetland habitat management and monitoring is a requirement of any applicable state and/or federal permits, the applicant shall be responsible for providing the associated funding to the City of San Diego. Funding may be provided by a variety of means including, but not limited to, the establishment of an endowment or Community Facilities District. The amount of funding shall be calculated through the use of a Property Analysis Record (PAR) or other similar method and shall be approved by the Park and Recreation Department prior to acceptance of the land. In no case will the City be required to accept any brush management functions that are made a condition of a discretionary project. It is expected that a homeowners association or similar group will be established for any brush management responsibilities.

- b. Private Party Management

If the City does not hold fee title, or a conservation easement is not granted, then the project applicant must provide for the management of the mitigation area. The Mitigation Program must include documentation on how the project would implement the objectives of the MSCP Preserve Management and the area specific management directives. The Mitigation Program must identify the responsible entity for long-term maintenance and management, the requirements for future management and monitoring reports, and a secure funding source for the management in perpetuity.

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Section IV FINDINGS/DEVIATIONS

Development on a site containing sensitive biological resources requires the approval of a Neighborhood Development Permit or Site Development Permit, unless exempted from the requirements to obtain the permit pursuant to the Environmentally Sensitive Lands regulations. The required findings for a Neighborhood Development Permit or Site Development Permit are listed in the Land Development Code Section 126.0504. In addition to the general findings for a Neighborhood Development Permit or Site Development Permit, approval of a development on a site containing sensitive biological resources requires that six additional findings be made that are specific to the environmentally sensitive lands present. These are also listed in the Land Development Code Section 126.0504. Section A, below, discusses these additional six required findings, and what will be considered in making the findings.

Coastal Overlay Zone

In the Coastal Overlay Zone, a Coastal Development Permit will be required regardless of whether a Site Development Permit or Neighborhood Development Permit is required for all coastal development proposed within the Coastal Overlay Zone and which does not qualify for an exemption pursuant to Section 126.0407. Such coastal development is subject to the Environmentally Sensitive Lands Regulations as applicable within the Coastal Overlay Zone. The findings required in Section 126.0708 must be made to assure conformance with the land use plans and implementation program of the certified Local Coastal Program.

Additionally, if a deviation from any of the Environmentally Sensitive Lands Regulations is requested, two more findings must be made in addition to the general Neighborhood Development Permit or Site Development Permit findings and the five additional findings for environmentally sensitive lands.

Outside of the Coastal Overlay Zone

Deviations to the wetland regulations in the ESL regulations for *development* located outside of the Coastal Overlay Zone may be granted only if the development is an Essential Public Project (EPP), is necessary to preserve economic viability, and/or a Biologically Superior Option.

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Essential Public Projects

A deviation from the strict application of the ESL regulations may be warranted when an Essential Public Project (EPP) serving basic infrastructure needs of the community or the region must be implemented and no feasible alternative exists which will strictly comply with the policies and regulations of ESL. The purpose of this deviation process is to provide a mechanism for relief from the strict application of wetland ESL regulations when necessary to implement an EPP that cannot be located elsewhere. The deviation findings would not be utilized for wetland impacts that would result solely from fuel management activities. Any public project identified in an adopted land use plan or implementing document and identified on the Essential

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Public Projects List adopted by Resolution No.[insert No.] as Appendix [insert appendix] to the Biology Guidelines; or Linear infrastructure, including but not limited to major roads and *land use plan* circulation element roads and facilities including bike lanes, water and sewer pipelines including appurtenances, and stormwater conveyance systems including appurtenances; or (c) Maintenance of existing public infrastructure (e.g., stormwater systems); or (d) State and federally mandated projects (e.g., 303(d) listed projects required by the Regional Water Quality Control Board to clean up an impaired water body).

Economic Viability

In rare circumstances, it may be necessary to deviate from the strict application of ESL regulations in order to preserve a private property owner's right to an economically viable use of property pursuant to current U.S. Supreme Court takings law. The purpose of this deviation process is to disclose, evaluate, and objectively determine the economic viability of a proposed project with and without the granting of a deviation. This process is intended to ensure that if a deviation is to be granted for economic viability, it will be done only for circumstances not of the applicant's making. This means that a deviation should not be granted to achieve economic viability when the primary reason a project is economically unviable, absent the deviation, is because of a poor investment decision by a land owner. An economic viability deviation should not be based solely on a prospective rezone. Any deviation for economic viability should be the minimum necessary to achieve economically viable use of the property. In the case where the findings below can be made, it is the intent of the City at its sole discretion to offer to compensate willing sellers at market value for protection of high quality wetlands depending on funding availability and acquisition priorities. Any offers to acquire the property and the results of the offer will be presented to the City decision-maker at the time they consider the economic viability finding.

Biologically Superior Option

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A deviation from the strict application of the policies and regulations may be warranted if, a biological alternative can be proposed by the project applicant that achieves a superior biological result which provides a clear net increase in quality and viability (functions and value) for the type of biological resource being impacted. A Biologically Superior Option should only used to when the project would result in impacts to low quality wetlands. Proper analysis under this deviation process as indicated in Section III - Biological Impact Analysis and Mitigation Procedures would determine whether a deviation should be granted because the lower quality biological resource is expendable in exchange for: (a) standard mitigation as required per Table 2a AND a biologically superior project design whose avoided area(s) (i) is in a configuration that optimizes the potential long-term biological viability of the on-site sensitive biological resources, and/or (ii) conserves the rarest and highest quality on-site biological resources (see Figure 2 for an example); or (b) extraordinary mitigation per Table 2b for projects not consistent with (a) above, preservation (i.e., off-site acquisition), and/or additional restoration or creation of the same type of wetland being impacted that results in higher quality wetlands.

Within the Coastal Zone

These findings are listed in Land Development Code Section 126.0504. Section B identifies the two additional deviation findings and what will be considered in making the findings. Deviations from the Environmentally Sensitive Lands Regulations within the Coastal Overlay Zone shall be approved only after the decision maker makes an economically viable use determination and findings pursuant to Section 126.0708(e).

A. Permit Findings for ESL (SDLDC Sec. 126.0504)

1. *The site is physically suitable for the design and siting of the proposed development and the development will result in minimum disturbance to environmentally sensitive lands;*
 - For projects in the OR-1-2 Zone, the proposed development complies with the allowable development area regulations of the underlying zone (SDLDC Section 131.0250 et seq).
 - For development that is proposed to occur within the MHPA, the proposed development is sited on the least sensitive portion of the site as pursuant to Section II.A.2 of the Biology Guidelines.
2. *The proposed development will minimize the alteration of natural landforms and will not result in undue risk from geologic and erosional forces, flood hazards, and fire hazards;*

[This finding is primarily applicable to sites that contain steep hillsides; refer to Steep Hillside Guidelines]
3. *The proposed development will be sited and designed to prevent adverse impacts on any adjacent environmentally sensitive lands;*
 - For development that is proposed to occur within or adjacent to the MHPA, the proposed development conforms to the recommendations of the City's MSCP Plan, Section 1.4.3 Land Use Adjacency in regards to the treatment of the MHPA boundary (e.g., fencing, lighting, drainage).
 - The proposed project conforms ~~with~~ to the requirements of the Biology Guidelines for the protection and management of any lands left undeveloped as a condition of the permit (Section III.B.2 and III.B.3).
4. *The proposed development will be consistent with the City of San Diego MSCP Subarea Plan.*

The proposed development will be consistent with the provisions of the City's Subarea Plan including but not limited to:

- General and specific MHPA Guidelines of Section 1.2 (Description of Subarea),
- Section 1.3 conditions for MSCP species coverage,
- Section 1.4.1 Compatible Land Uses
- Section 1.4.2 General Planning Policies and Design Guidelines
- Section 1.4.3 Land Use Adjacency Guidelines section, and
- General and specific management recommendations of Section 1.5 Framework Management Plan.

5. *The proposed development will not contribute to the erosion of public beaches or adversely impact local shoreline sand supply.*

[This finding is applicable if the site contains sensitive coastal bluffs or coastal beaches; drainage from the site should not significantly impact these environmentally sensitive lands]

6. *The nature and extent of mitigation required as a condition of the permit is reasonably related to and calculated to alleviate negative impacts created by the proposed development.*

- The proposed project has identified all potentially significant impacts pursuant to the *City of San Diego's Significance Determination Guidelines Under the California Environmental Quality Act (City of San Diego 2000)*, and has provided a Mitigation Program in conformance with the Biology Guidelines. Any departures from the mitigation standards of the Biology Guidelines have been both qualitatively and quantitatively supported by the site-specific information presented in the Biological Survey Report.

B. Additional Development Permit Findings for Deviation from ESL

1. *There are no feasible measures that can further minimize the potential adverse effects on environmentally sensitive lands.*

- The proposed project has considered all alternatives (including avoidance) and all technically feasible mitigation and has either incorporated these measures into the project or has provided evidence for why the measures are infeasible. All projects with unmitigated impacts will need to provide CEQA Findings and a Statement of Overriding Considerations to the decision maker.

2. *The proposed deviation is the minimum necessary to afford relief from special circumstance or conditions applicable to the land and not of the applicant's making.*

- The deviation is only from those regulations necessary to make the project feasible. Alternative methods for achieving the goals of those regulations are presented by the project. The project has clearly demonstrated that further avoidance or minimization is infeasible, and that feasible mitigation has been provided.
- Other regulations and guidelines for sensitive biological resources will be complied with so that the overall development design will conform to the intent of the Sensitive Biological Resources Regulations of the ESL, the intent of the OR-1-2 Zone, the Biology Guidelines and the City's MSCP Subarea Plan, including the Habitat Management Plan.
- Natural feature or conditions exist that make compliance with the regulations infeasible for a particular use. Affording relief should not be evaluated against the applicant's desired use of the site, but should reflect the existing development rights of the underlying zone.

For example, if a site is completely covered by a narrow endemic species, leaving the site without development potential under the ESL, then the deviation process could be used to afford relief, per the underlying zone.

Deviations may not be used solely to accommodate a development that clearly does not conform to the regulations when it appears feasible that measures could be incorporated to achieve compliance.

C. Deviations from Environmentally Sensitive Lands Regulations Within the Coastal Overlay Zone (Section 126.0708(3))

Where a deviation is requested from the Environmentally Sensitive Lands Regulations because the applicant contends that application of the regulations would result in denial of all economically viable use, the Coastal Development Permit shall include a determination of economically viable use, subject to the following process:

3. *Application of Economically Viable Use Determination*

Any applicant that requests a deviation from the Environmentally Sensitive Lands Regulations based on the contention that the uses permitted by the regulations will not provide an economically viable use of the property shall apply for an economic viability determination in conjunction with the Coastal Development Permit application. The application for an economic viability determination shall include the entirety of all parcels that are geographically contiguous and held by

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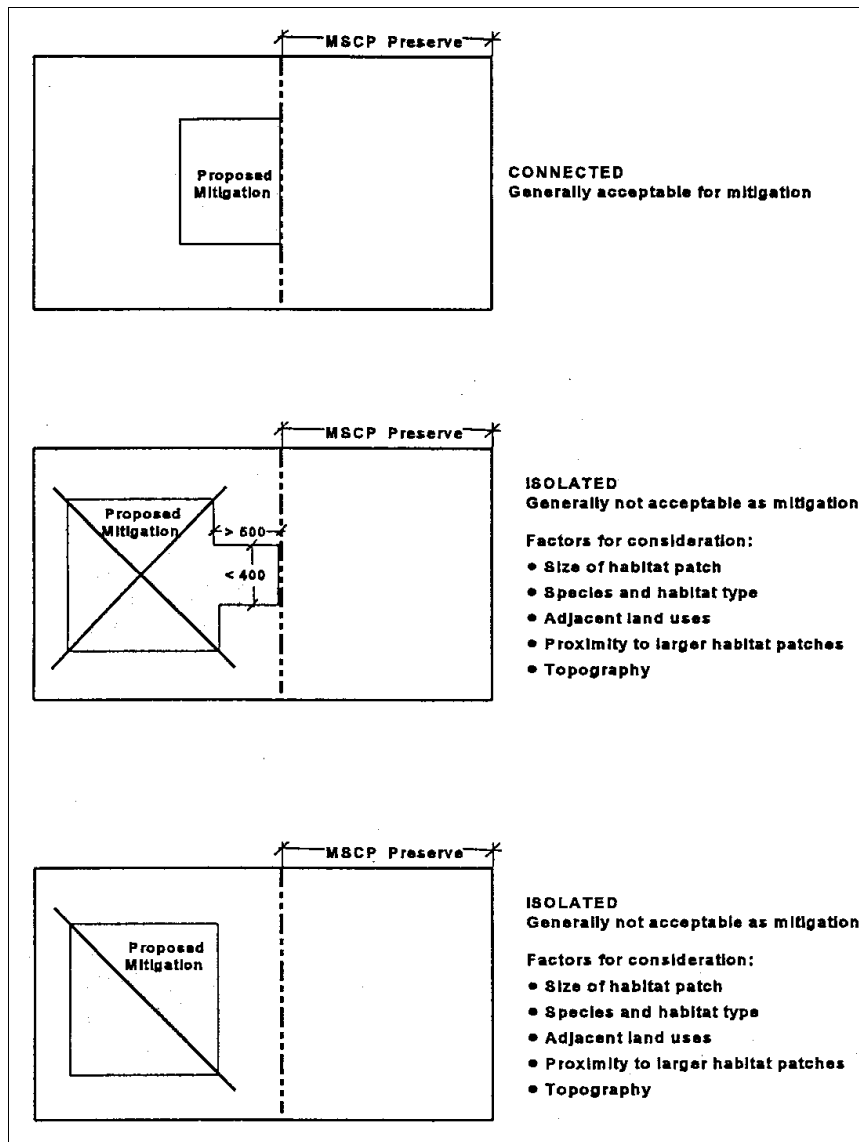
the applicant in common ownership at the time of the application. Before any application for a Coastal Development Permit and Economic Viability Determination is accepted for processing, the applicant shall provide the following information:

- a. The date the applicant purchased or otherwise acquired the property and from whom it was acquired.
- b. The purchase price and the documentary transfer tax paid by the applicant for the property.
- c. The fair market value of the property at the time the applicant acquired it, describing the basis upon which the fair market value is derived, including any appraisals done at the time.
- d. The general plan, zoning or similar land use designations applicable to the property at the time the applicant acquired it, as well as any changes to these designations that occurred after the acquisition.
- e. Any development restrictions or other restrictions on use, other than government regulatory restrictions described (4) above, that applied to the property at the ~~time~~ time the applicant acquired it, or which have been imposed after acquisition.
- f. Any change in the size of the property since the time the applicant acquired it, including a discussion of the nature of the change, the circumstances, and the relevant dates.
- g. A discussion of whether the applicant has sold, leased, or donated a portion of or interest in the property since the time of purchase indicating the relevant dates, sales prices, rents, and nature of the portion or interests in the property that were sold or leased.
- h. Any title reports, litigation guarantees or similar documents in connection with all or a portion of the property of which the applicant is aware.
- i. Any offers to buy all or a portion of the property which the applicant solicited or received, including the approximate date of the offer and offered price.
- j. The applicant's costs associated with the ownership of the property annualized to the extent feasible, for each of the years the applicant has owned the property, including property taxes, property assessments, debt service costs (such as ~~mortgage~~ mortgage and interest costs) and operation and management costs.

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- k. Apart from any rent received from the leasing of all or a portion of the property, any income generated by the use of all or a portion of the property over years of ownership of the property. If there is any such income to report, it should be listed on an annualized basis along with a description of the uses that generate or have generated such income.
- l. Topographic, vegetative, hydrologic and soils information prepared by a qualified professional, which identifies the extent of the wetlands on the property.
- m. An analysis of alternatives to the proposed project and an assessment of how the proposed project is the least environmentally damaging alternative. The analysis of alternatives shall include an assessment of how the proposed project will impact all adjacent wetlands and environmentally sensitive habitat areas including those within the overall development plan area.

FIGURE 4.5
Determination of Connectivity



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ATTACHMENT “A”

**FLORA AND FAUNA
COVERED BY THE MULTIPLE SPECIES CONSERVATION PROGRAM**

SCIENTIFIC NAME	COMMON NAME	DESIGNATION (FS/CNPS/RED)
FLORA:		
Acanthomintha ilicifolia	San Diego thormint	PE/SE/1B/232
Agave shawii	Shaw’s agave	--/--/2/333
Ambrosia pumila	San Diego ambrosia	--/--/1B/322
Aphanisma blitoides	Aphanisma	--/S2/3/222
Arctostaphylos glandulosa var. Crassifolia	Del Mar manzanita	FE/--/1B/332
Arctostaphylos otavenais	Otay Manzanita	--/--/1B/323
Astragalus tener var. titi	Coastal dunes milk vetch	F1/SE/1B/333
Baccharis vanessae	Encinitas Coyote brush	FE/SE/1B/333
Berberis nevinii	Nevin’s barberry	F1/SE/1B/333
Brodiaea filifolia	Thread-leaved brodiaea	PT/SE/1B/333
Brodisea occuttii	Orcutt’s brodiaea	--/--/1B/132
Calamagrostis koelerioides	Dense reed grass	F3C/--/4/122
Calochortus dunnii	Dunn’s mariposa lily	--/SR/1B/222
Caulanthus stenocarpus	Slender-pod jewel flower	--/SR/--/--
Ceanothus cyaneus	Lakeside ceanothus	--/--/1B/322
Ceanothus verrucosus	Wart-stemmed ceanothus	--/--/2/121
Cordylanthus maritimus ssp. maritimus	Salt marsh bird’s beak	FE/SE/1B/222
Cordylanthus orcuttianus	Ocutt’s bird’s beak	--/--/2/331
Corethrogyne filaginifolia var. linifolia	Del Mar sand aster	--/--/1B/323
Cupressus forbesii	Tecate cypress	--/--/1B/322
Dudleya blochmaniae ssp. brevifolia	Short-leaved live-forever	--/SE/1B/333
Dudleya variegata	Variegated dudleya	--/--/4/122
Dudleya viscidula	Sticky dudleya	F1/--/1B/323
Ericameria palmeri ssp. palmeri	Palmer’s ericameria	--/--/2/221
Erysimum ammodendrum	Coast wallflower	--/--/4/123
Eryngium aristulatum ssp. parishii	San Diego button-celery	FE/SE/1B/232
Ferocactus viridescens	San Diego barrel cactus	--/--/2/131
Hemizonia conjugens	Otay tarplant	PE/SE/1B/322
Lepechinia carophylla	Heart-leaved pitcher sage	--/--/1B/322
Lepechinia ganderi	Gander’s pitcher sage	--/--/1B/312
Lotus nuttallianus	Nuttall’s lotus	--/--/1B/332
Monardella hypoleuca ssp. lanata	Felt-leaved monardella	--/--/1B/223
Monardella linoides ssp. viminea	Willow monardella	PE/SE/1B/232
Muilla clevelandii	San Diego goldenstar	--/--/1B/222
Navarretia fossalis	Prostrate navarretia	--/--/1B/232
Nolina intermedia	Dehesa bear-grass	F1/SE/1B/332
Opuntia parryi var. Serpentina	Snake cholla	--/--/1B/332
Orcuttia californica	California Orcutt grass	FE/SE/1B/332
Pogogyne abramsii	San Diego Mesa mint	FE/SE/1B/233
Pogogyne nudiuscula	Otay Mesa mint	FE/SE/1B/332

Pinus torreyana ssp. torreyana	Torrey pine (native populations)	--/--/1B/323
Rosa minutifolia	Small-leaved rose	--/SE/2/331
Satureia chandleri	San Miguel savory	F3C/--/4/122
Senecio ganderi	Gander's butterweed	--/SR/1B/232
Solanum tenuilobatum	Narrow-leaved nightshade	--/--/--/--
Tetracoccus dioicus	Parry's tetracoccus	--/--/1B/322
FAUNA:		
Panoquina errans	Saltmarsh skipper	--/--
Mitoura thornei	Thorne's hairstreak	--/S2
Branchinecta sandiegoensis	San Diego fairy shrimp	FE/--
Streptocephalus woottoni	Riverside fairy shrimp	FE/--
Bufo microscanphus ssp. californicus	Arroyo southwestern toad	FE/SSC
Rana aurora ssp. Draytoni	California red-legged frog	FT/SSC
Clemmys marmorata ssp. Pallida	Southwestern pond turtle	--/SSC
Cnemidophorus hyperythrus ssp. beldingi	Orange-throated whiptail	--/SSC
Phrynosoma coronatum ssp. blainvillei	San Diego horned lizard	--/SSC
Accipiter cooperii	Cooper's hawk	--/SSC
Agelaius tricolor	Tri-colored blackbird	--/SSC
Aquila chrysaetos	Golden eagle	--/SSC
Aimophila ruficeps ssp. canescens	Southern California rufous crowned sparrow	
Branta Canadensis ssp. Moffitti	Canada goose	--/--
Buteo swainsoni	Sainson's hawk	--CT
Buteo regalis	Ferruginous hawk	--/SSC
Campylorhynchus brunneicapillus ssp. Cousei	Coastal cactus wren	--/SSC
Charadrius alexandrinus ssp. nivosus	Western snowy plover	FT/SSC
Charadrius montanus	Mountain plover	--/SSC
Circus cyaneus	Northern harrier	--/SSC
Egretta rufescens	Reddish egret	--/--
Empidonax traillii ssp extimus	SW. Willow flycatcher	FE/SE
Falco peregrinus anatum	American peregrine falcon	--/ST
Haliaeetus leucocephalus	Bald eagle	FE/SE
Numenius americanus	Long-billed curlew	F3C/SSC
Passerculus sandwichensis ssp. belding	Belding's savannah sparrow	--/SE
Passerculus sandwichensis	Large-billed savannah sparrow	--/SSC
Palcanus occidentalis ssp. californicus	California brown pelican	FE/SE
Plegadis chihi	White-faced ibis	--/SSC
Poliopitila californica ssp. californica	California gnatcatcher	FT/SSC
Rallus longirostris ssp. levipes	Light-footed clapper rail	FE/SE
Sialia mexicana	Western bluebird	--/--
Speotyto (Athene) cunicularia ssp. hypugaea	Western burrowing owl	--/SSC
Sterna elegans	Elegant tern	--/SSC
Sterna antillarum ssp. browni	California least tern	FE/SE
Vireo bellii ssp. pusillus	Least Bell's vireo	FE/SE
Taxidea taxus	American badger	--/SSC
Felis concolor	Mountain lion	--/--
Odocoileus hminus fuliginata	Southern mule deer	--/--

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Federal Listing
State of California Listing
CNPS – California's Native Plant Society List

ATTACHMENT “B”

**GENERAL OUTLINE FOR
REVEGETATION/RESTORATION PLANS**

Introduction

- _____ Background and project location(s) (with maps)
- _____ Project Purpose and Restoration Goal(s) and Objectives

Existing Conditions

- _____ Environmental setting/vegetation and wildlife of affected/impacted area(s) [can be in intro]
- _____ Environmental setting, ownership, land uses of area to be revegetated (figures/maps)
- _____ Description/evaluation of vegetation, soil, hydrology/drainage conditions, topography, constraints (topo maps)
- _____ Reference site(s) for development of specifications, and for monitoring use

Responsibilities

- _____ Financial responsibility
- _____ Revegetation Team:
 - _____ Project Biologist (include training of contractors, as needed)
 - _____ Monitor (if different)
 - _____ Landscape/Reveg/Maintenance Contractor(s)
 - _____ Seed/plant collection/procurement contracting

Site Preparation

- _____ Removal of debris, if necessary
- _____ Land shaping/grading and drainage plan, if needed
- _____ Topsoil/brush & propagule salvage and translocation plan, if needed
- _____ Weed eradication
- _____ Soil preparation

Planting Specifications

- _____ Seed sources and procurement
- _____ Seed Mixes/Container plant lists (lbs/ac)
- _____ Planting Design (include timing/schedule, planting plan)
- _____ Seed application methods (imprinting, hydroseed or mulch, hand broadcasting, etc.)
- _____ Irrigation

Maintenance

- _____ Site protection (fencing, signage)
- _____ Weed Control (methods, schedule)
- _____ Horticultural treatments (pruning, leaf litter, mulching, removal of diseased plants)
- _____ Erosion control
- _____ Replacement plantings and reseeding
- _____ Vandalism

—— Irrigation maintenance, if needed

Monitoring and Success Assessment

—— Monitoring & Reporting schedules

—— Performance standards

—— Monitoring procedures

—— Horticultural (seeding and plant assessments)

—— Biological, including sampling methods

—— Reporting program

Remediation and Contingency Measures

Performance Bond

Notification of Completion

The following outline represents an update to Attachment B of the City's Biology Guidelines and is intended to provide guidance in the preparation and review of conceptual revegetation/restoration plans. This outline is not intended as an exhaustive list of all design elements to consider when planning a revegetation effort. Consideration must also be given to the City's Land Development Code Landscape regulations (Chapter 14, Article 2, Division 4) and Landscape Standards when preparing conceptual revegetation plans and detailed revegetation construction drawings.

Introduction

- Background – Purpose
- Project location(s) with maps (regional, vicinity, site plan)
- Restoration goals and objectives/Mitigation requirements

Existing Conditions

- Environmental setting of impacted areas – vegetation & wildlife affected, functions and values, impact acreages, reference sites for development of revegetation specifications (can be in intro)
- Environmental setting of revegetation areas – land ownership, existing land uses
- Revegetation site characteristics: description/evaluation of topography, vegetation, soils, hydrology/drainage, access, site constraints (figures/maps)
- Regulatory requirements

Mitigation Roles & Responsibilities

- Financially responsible party – Performance bonds

- Revegetation team: Applicant, Landscape Architect, Revegetation Installation Contractor, Revegetation Maintenance Contractor (if different), Project Biologist, Nursery (seed/plant procurement)

Site Preparation

- Site and resource protection – staking/flagging/fencing of sensitive habitat areas/limits of work
- Weed eradication
- Topsoil/plant salvage (if needed)
- Clearing/grubbing
- Grading/recontouring

Irrigation

- Water source and supply
- Temporary or permanent installation
- Manual or automatic

Plant Installation Specifications

- Species composition lists – container plants/seed mixes/quantities and sizes
- Planting arrangement/design (include conceptual planting plan)
- Planting procedure – interim storage methods, seed application methods, cuttings, special handling
- Timing of plant installation
- Irrigation requirements – frequency and duration

Maintenance Program

120-Day Plant Establishment Period (PEP)

- Weed Control
- Horticultural treatments (pruning, mulching, disease control)
- Erosion control
- Trash & debris removal
- Replacement planting and reseeding
- Site protection and signage
- Pest management
- Vandalism
- Irrigation maintenance

Five-Year Maintenance Period for Each Year Following the 120-Day PEP

- See 120-day plant establishment items above

Biological Monitoring

- Reference sites for development of performance criteria
- Monitoring procedures – qualitative (photo documentation) and quantitative (vegetation sampling methods)
- Monitoring frequency
 - 1. 120-Day Plant Establishment – Does revegetation meet intended design requirement?
 - 2. 5-Year monitoring requirement – or until 5th year performance/success criteria met
- Performance/success criteria
- Reporting program

Schedule of Activities

Remediation Measures

Completion of Mitigation Notification

Literature/Reference Citations



APPENDIX I

DEVELOPMENT SERVICES DEPARTMENT

SIGNIFICANCE DETERMINATION THRESHOLDS UNDER CEQA

BIOLOGICAL RESOURCES

OCTOBER 2008

BIOLOGICAL RESOURCES

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I. INTRODUCTION

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The California Environmental Quality Act (CEQA) Guidelines define "significant effect on the environment" as a "substantial or potentially substantial adverse change in the environment". The CEQA Guidelines (Appendix G) further indicate that there may be a significant effect on biological resources if the project will:

- A. Substantially affect an endangered, rare, or threatened species of animal or plant or the habitat of the species;
- B. Interfere substantially with the movement of any resident or migratory fish or wildlife species; or
- C. Substantially diminish habitat for fish, wildlife, or plants.

Impacts to biological resources are evaluated by City staff through the CEQA review process, the Environmentally Sensitive Lands Regulations and Biology Guidelines, and through the review of the project's consistency with the City's Multiple Species Conservation Program (MSCP) Subarea Plan. Before a determination of the significance of an impact can be made, the presence and nature of the biological resources must be established. If biological resources may be present, a survey should be conducted pursuant to the City of San Diego's Guidelines for Conducting Biological Surveys (revised 2002 2008).

Sensitive biological resources are defined by the City of San Diego Municipal Code as:

- Lands that have been included in the Multi-Habitat Planning Area (MHPA) as identified in the City of San Diego Multiple Species Conservation Program (MSCP) Subarea Plan (City of San Diego, 1997);
- Wetlands (as defined by the Municipal Code, Section 113.0103);
- Lands outside the MHPA that contain Tier I Habitats, Tier II Habitats, Tier IIIA Habitats, or Tier IIIB Habitats as identified in the Biology Guidelines (July 2002 or current edition) of the Land Development manual;
- Lands supporting species or subspecies listed as rare, endangered, or threatened;
- Lands containing habitats with narrow endemic species as listed in the Biology Guidelines of the Land Development manual; and
- Lands containing habitats of covered species as listed in the Biology Guidelines of the Land Development manual.

For projects within the City of San Diego or carried out by the City of San Diego which may affect sensitive biological resources, potential impacts to such sensitive biological resources must be

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~~assessed/evaluated using The following criteria and information, are provided for guidance during this process.~~

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INITIAL STUDY CHECKLIST QUESTIONS

The following are from the City's Initial Study Checklist and provides guidance to determine potential significance to Biological Resources:

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Would the proposal result in:

1. A substantial adverse impact, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in the MSCP or other local or regional plans, policies or regulations, or by the California Department of Fish and Game (CDFG) or U.S. Fish and Wildlife Service (USFWS)?
2. A substantial adverse impact on any Tier I Habitats, Tier II Habitats, Tier IIIA Habitats, or Tier IIIB Habitats as identified in the Biology Guidelines of the Land Development manual or other sensitive natural community identified in local or regional plans, policies, regulations, or by the CDFG or USFWS?
3. A substantial adverse impact on wetlands (including, but not limited to, marsh, vernal pool, riparian, etc.) through direct removal, filling, hydrological interruption, or other means?
4. Interfering substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, including linkages identified in the MSCP Plan, or impede the use of native wildlife nursery sites?
5. A conflict with the provisions of an adopted Habitat Conservation Plan, Natural Conservation Community Plan, or other approved local, regional, or state habitat conservation plan, either within the MSCP plan area or in the surrounding region?
6. Introducing land use within an area adjacent to the MHPA that would result in adverse edge effects?
7. A conflict with any local policies or ordinances protecting biological resources?
8. An introduction of invasive species of plants into a natural open space area?

SIGNIFICANCE THRESHOLDS

Impacts to biological resources are assessed by City staff through the CEQA review process, and through review of the project's consistency with the Environmentally Sensitive Lands (ESL) regulations, the Biology Guidelines (July 2002) and with the City's MSCP Subarea Plan. Before a determination of the significance of an impact can be made, the presence and nature of the biological resources must be established.

The following two steps summarize the procedure for collecting the necessary information.

STEP 1:

Determine the extent of biological resources and values present on the site. The analyst needs to visit the site and review existing biological information (e.g. MSCP vegetation maps). If there is any evidence that the site supports or recently supported biological resources, significant biological resources (see clarification in Step 2), a survey or letter report is necessary.

A factor in making this determination is whether or not the site has been illegally graded or grubbed. In some cases it is appropriate to consider the biological values on the site before a disturbance such as grading or fire. In general, if the site has been legally graded or grubbed and/or is characterized by ruderal species, is not included in the City's MHPA, and does not support wetlands or Tier I, II or III habitat, it probably does not support significant biological resources.

Note: The presence of trash and debris on a site does not indicate a lack of biological habitat. In addition, lack of vegetation due to fire, clearing of vegetation for brush management (Zone 2 is impact neutral), unauthorized off-road vehicle use or other uses also does not preclude the presence of potential habitat.

An affirmative answer to any of the following questions indicates that significant biological resources MAY be present:

- a. The site has been identified as part of the MHPA by the City's MSCP Subarea Plan.
- b. The site supports or could support (e.g. in different seasons/rainfall conditions, etc.) Tier I, II, or IIIA & B vegetation communities (such as grassland, chaparral, coastal sage scrub, etc.). The CEQA determination of significant impacts may be based on what was on the site (e.g. if illegal grading or vegetation removal occurred, etc.), as appropriate.
- c. The site contains, or comes within 100 feet of a natural or manufactured drainage (determine whether it is vegetated with wetland vegetation). The site occurs within the 100-year flood plain established by the Federal Emergency Management Agency (FEMA) or the Flood Plain Fringe (FPF)/ Flood Way (FW) zones.
- d. The site does not support a vegetation community identified in Tables 2a, 2b or 3 (Tier I, II, IIIA or IIIB) of the Biology Guidelines (July 2002 October 2008); however, wildlife species listed as threatened or endangered or other protected species may use the site (e.g.

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California least terns on dredge spoil, wildlife using agricultural land as a wildlife corridor, etc.).

STEP 2:

Based on Step 1, if significant biological resources are present, then a survey to determine the nature and extent of the biological resources on the site is warranted (See Guidelines for Conducting Biology Surveys, revised 2002~~8~~). The survey should identify which biological resources are present on the site and its immediately surrounding area, and the number and extent of each type. As appropriate and when relevant to the biological resources found on site, the survey should also discuss the nature and quality of the biological resources in the immediate vicinity of the project site.

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The significance and/or sensitivity of the resource can be determined at this stage, however, a resource may be more vulnerable to some kinds of development than to others. Sensitivity and/or significance of impacts is, therefore, more appropriately considered in the context of the proposed project, as discussed below. Direct impacts to wetland habitat would require a deviation from the wetland regulation requirements as outlined in Section IV.B. of the Biology Guidelines, the Environmentally Sensitive Lands Regulation (Section 126.0504 and 143.0101) and would only be considered under one of the three deviation/mitigation options described in Section III of the Biology Guidelines. The criteria for determining which option could be utilized must be incorporated into the biological technical report prepared for the project.

Biology Significance Determination

1. Direct Impacts

The direct, indirect and cumulative impacts of a project must be analyzed for significance. The first step in making the determination is to identify the nature of the impact, and the extent, and degree of direct impacts to biological resources. A direct impact is a physical change in the environment which is caused by and immediately related to the project. An example of a direct physical change in the environment is the removal of vegetation due to brushing, grubbing, grading, trenching, and excavating.

In order to determine the extent of impacts, the acreage of each habitat type to be lost should be quantified. If an upland, categorize the land into one of the four Tier categories (I -IV), which are listed on Table 3 of the Biology Guidelines (~~July 2002~~ October 2008). If a natural wetland, categorize as indicated on Tables 2a and/or 2b of the Biology Guidelines (~~July 2002~~ October 2008). In addition, the boundaries of the MHPA should be determined and any proposed encroachment should be quantified. Where possible, the extent or number of individuals of sensitive, threatened, rare, or endangered species to be taken or harassed should also be quantified. In order to determine the degree of the impact, fragmentation of habitat, loss of foraging area for sensitive species, and other factors should be considered.

The City's permit to 'take' covered species under the MSCP is based on the concept that 90% of lands within the MHPA will be preserved. Any encroachment into the MHPA (in excess of the allowable encroachment by a project) would be considered significant and require a boundary adjustment which would include a habitat equivalency assessment to ensure that what will be added to the MHPA is at least equivalent to what would be removed.

In addition, lands containing Tier I, II, IIIa and IIIb [(see Table 3 of City's Biology Guidelines (July 2002 October 2008)) and all wetlands [see Tables 2a and/or 2b of City's Biology Guidelines (July 2002 October 2008))] are considered sensitive and declining habitats. As such, impacts to these resources may be considered significant. Lands designated as Tier IV are not considered to have significant habitat value and impacts would not be considered significant.

Impacts to individual sensitive species, outside of any impacts to habitat, may also be considered significant based upon the rarity and extent of impacts. Impacts to state or federally listed species and all narrow endemics [see the City's Biology Guidelines (July 2002 October 2008)] should be considered significant. Certain species covered by the MSCP [see page 26 Section I of the Biology Guidelines (July 2002 October 2008)] and other species not covered by the MSCP, may be considered significant on a case-by-case basis taking into consideration all pertinent information regarding distribution, rarity, and the level of habitat conservation afforded by the MSCP.

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NOTES:

(a) Total upland impacts (Tiers I- IIIB) less than 0.1 acre are not considered significant and do not require mitigation. See Section 3 (Cumulative Impacts) relative to native grasslands.

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(b) Impacts to non-native grasslands totaling less than 1.0 acres which are completely surrounded by existing urban developments are not considered significant and do not require mitigation. Examples may include urban infill lots.

(c) Total wetland impacts less than 0.01 acre are not considered significant and do not require mitigation. THIS DOES NOT APPLY TO VERNAL POOLS or wetlands within the Coastal Zone.

(d) Brush management Zone 2 thinning activities, while having the potential to adversely affect biological resources, are not considered potentially significant inside the MHPA or, to the extent that non-covered species are not impacted, outside the MHPA, because of the implementation of the MSCP. Brush management Zone 2 thinning outside the MHPA which affects non-covered species is potentially significant. Brush management not conducted in accordance with brush management regulations, regardless of where it is located, is also potentially significant.

(d) Mitigation is not required for impacts to non-native grassland habitat when impacted for the purpose of wetland or other native habitat creation.

(e) Habitat mitigation is not required for impacts to manufactured slopes or areas that have been planted with native species for the purpose of erosion control. For example, in order to qualify for this exception, substantiation of previous permits and mitigation must be provided. Noise mitigation, however may be required for significant noise impacts to certain avian species during their breeding season depending upon the location of the slope (such as adjacent to an MHPA) and what birds may be present in the area such as the California gnatcatcher, least Bell's vireo.

southern willow flycatcher, least tern, cactus wren, tricolored blackbird, or western snowy plover. If these avian species (except for the California gnatcatcher) are present, then mitigation will be required if construction or operational noise levels would exceed 60 db(A), or the existing ambient noise level if already above 60dB(A) during the breeding season. For California gnatcatcher habitat within the MHPA and occupied, construction or operational noise levels exceeding 60 dB(A) (or exceeding the existing ambient noise level if already above 60 dB(A)) during the breeding season is considered significant. There are no restrictions for the gnatcatcher **outside** the MHPA anytime of the year.

In addition, inside the MHPA, impact avoidance areas are required for Cooper's hawk, northern harrier, golden eagle, burrowing owl, and southwestern pond turtle. See Biology Guidelines, Section II, A. 2 & 4. and Section 9.12 of the Implementing Agreement.

(f) Removal/control of non-native plants is not considered to constitute a significant habitat impact for which compensatory habitat acquisition, preservation, or creation for the area impacted is required. Mitigation for indirect impacts such as erosion control or off-site infestation by non-native species may be needed.

2. Indirect Impacts

CEQA Guidelines §15064(d) provides the following guidance regarding identification of direct versus indirect impacts:

In evaluating the significance of the environmental effect of a project, the Lead Agency shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project.

- a. An indirect impact is a physical change in the environment which is not immediately related to the project, but which is caused indirectly by the project. If a direct impact in turn causes another physical change in the environment, then the secondary changes is an indirect impact. For example, the dust from heavy equipment that would result from grading for a sewage treatment plant could settle on nearby vegetation and interfere with photosynthetic processes; and the construction equipment noise levels could interrupt reproductive behavior within adjacent sensitive avian breeding habitats during the breeding season.
- b. An indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project. A change which is speculative or unlikely to occur is not reasonably foreseeable.

Depending on the circumstances, indirect impacts of a project may be as significant as the direct impacts of the project. In general, however, indirect impacts are easier to mitigate than direct ones. Some impacts may be considered indirect impacts in some circumstances and direct impacts under other circumstances. Indirect impacts include but are not limited to, the following impacts:

- a. The introduction of urban meso-predators into a biological system;
- b. The introduction of urban runoff into a biological system;
- c. The introduction of invasive exotic plant species into a biological system;
- d. Noise and lighting impacts (note: consider both construction/demolition and operational phases of the project); and
- e. Alteration of a dynamic portion of a system, such as stream flow characteristics or fire cycles; and
- f. Loss of a wetland buffer that includes no environmentally sensitive lands.

3. Cumulative Impacts

The MSCP was designed to compensate for the regional loss of biological resources throughout the region. Projects that conform with the MSCP as specified by the Subarea Plan, and implementing ordinances, (i.e. ~~July 2002~~ October 2008 Biology Guidelines and ESL Regulations) are not expected to result in a significant cumulative impact for those biological resources adequately covered by the MSCP. These resources include the vegetation communities identified as Tier I through IV (see City's ~~July 2002~~ October 2008 Biology Guidelines, and the MSCP covered species list (see Appendix A of the City of San Diego's MSCP Subarea Plan).

All direct impacts to vernal pools are significant and cumulatively significant. **Impacts to vernal pools may be mitigated in accordance with the criteria in the Biology Guidelines.**

Direct impacts to perennial native grasslands that are greater than 0.1 acre are significant and cumulatively significant. **Direct impacts to this habitat type are mitigated via Tier I per Biology Guidelines. Cumulative impacts may be mitigated only via creation at a 1:1 ratio or greater with the feasibility of creation to be evaluated on a case-by-case basis.**

Impacts to species covered by the MSCP (see Appendix A of MSCP Subarea Plan) would not generally be considered cumulatively significant, provided the project is in full compliance with the MSCP and its implementing regulations. Impacts to state- or federally-listed species not covered by the MSCP may be considered cumulatively significant. Each situation will be evaluated on a case-by-case basis.

It is expected that many other sensitive species not analyzed for coverage under the MSCP will be adequately conserved through the MSCP's habitat-based mitigation plan. A rare circumstance may arise, however, where impacts to a particular species may still result in a cumulatively significant impact. The project-level biological survey report would identify those species and describe why a cumulative impact still exists in light of the habitat level of protection provided by the MSCP.

Depending on the size of the impact, the salt marsh daisy (*Lasthenia glabrata* ssp. *coulteri*) found in salt pannes) and the little mouse tail (*Myosurus minimus*) found in vernal pools would be examples of non-covered species that might be considered rare enough to conclude cumulatively significant impacts.

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APPENDIX II

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GUIDELINES FOR CONDUCTING BIOLOGICAL SURVEYS

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APPENDIX III

ESSENTIAL PUBLIC PROJECTS LIST

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CITY OF SAN DIEGO
M E M O R A N D U M

DATE: November 5, 2008

TO: Members of the Code Monitoring Team (CMT)

FROM: Kelly G. Broughton, Director, Development Services

SUBJECT: Amateur Radio Communication Amendments

Amateur radio communication is regulated by the Federal Communication Commission. Since August 8, 2001, the Land Development Code (LDC) has exempted this type of communication from the telecommunication regulations. Currently, the LDC does not contain specific development regulations related to amateur radio antennas. Based on previous City Attorney opinions, amateur radio antenna installations have been allowed to exceed the maximum height of the underlying base zone in consideration of federal law. The City Attorney has since clarified that while the City is preempted from denying the communication use, the City may regulate the height and placement of the associated antenna and equipment.

On November 30, 2005, staff presented an informational report (Report 05-218) to the City Council Committee on Land Use and Housing regarding potential code amendments to regulate the height and placement of amateur radio communication antennas. The City Attorney also presented an analysis of the Federal Communication Commission's PRB-1 decision regarding local regulation of amateur radio communication. Since that time, staff has been working with the City Attorney's office to develop regulations to control the height and placement of amateur radio antenna structures to minimize impacts on the surrounding neighborhood.

In summary, a new separately regulated use (amateur radio communication) is proposed within the Chapter 13 zoning use tables. The use would be permitted in all zones as a limited use, meaning the use would be permitted by right subject to supplemental regulations. As proposed, a Site Development Permit (SDP) would be required where the associated antenna structures would not comply with the underlying base zone development regulations. The SDP supplemental development regulations would require placement of the antenna structure in the least visible location of the site, screening from the public right-of-way and adjacent properties, and lowering of the antenna during periods of non-operation. Staff requests that the Code Monitoring Team make a recommendation on the proposed code amendments, which will ultimately be considered by the City Council for approval.

§113.0103 Definitions

Abutting property through *Alley* [No change.]

Amateur radio antenna structures means any *antenna*, including its support *structure* and other equipment or apparatus, used for purposes of transmitting and receiving radio signals in conjunction with an amateur radio station licensed, or otherwise regulated, by the Federal Communications Commission.

Amended map through *Yard* [No change.]

§126.0502 When a Site Development Permit Is Required

(a) - (b) [No change.]

(c)(1) - (7) [No change.]

(8) *Amateur radio antenna structures* that deviate from the requirements of the underlying base zone, as described in Section 143.0360.

§131.0222 Use Regulations Table for Open Space Zones

[No change.]

**Table 131-02B
Use Regulations Table of Open Space Zones**

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones					
	1st & 2nd >>	OP-		OC-	OR ⁽¹⁾ -		OF ⁽¹²⁾ -
	3rd >>	1-	2-	1-	1-		1-
	4th >>	1	1	1	1	2	1
Open Space through Residential [No change.]							
Institutional							
Separately Regulated Institutional Uses							
Airports [No change.]							
<u>Amateur Radio Communication</u>		<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>

Draft Amateur Radio Communication Amendments
10.23.08

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones						
	1st & 2nd >>	OP-		OC-	OR ⁽¹⁾ -		OF ⁽¹²⁾ -	
		3rd >>	1-	2-	1-	1-		1-
		4th >>	1	1	1	1	2	1
Botanical Gardens & Arboretums through Wireless Communication Facility [No change.]								
Retail Sales through Signs [No change.]								

Footnotes for Table 131-02B [No change.]

§131.0322 Use Regulations Table for Agricultural Zones

[No change.]

Table 131-03B
Use Regulations Table of Agricultural Zones

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones			
	1st & 2nd >>	AG		AR	
	3rd >>	1-		1-	
	4th >>	1	2	1	2
Open Space through Residential [No change.]					
Institutional					
Separately Regulated Institutional Uses					
Airports [No change.]					
Amateur Radio Communication			L		L
Botanical Gardens & Arboretums through Wireless Communication Facility [No change.]					
Retail Sales through Signs [No change.]					

Footnotes for Table 131-03B [No change.]

§131.0422 Use Regulations Table for Residential Zones

[No change.]

Table 131-04B
Use Regulations Table of Residential Zones

Draft Amateur Radio Communication Amendments
10.23.08

Use Categories/ Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones																											
	1 st & 2nd >>	RE-	RS-														RX-		RT-										
	3rd >>	1-	1-														1-		1-										
	4th >>	1	2	3	1	2	3	4	5	6	7	8	9	10	11	12	13	14	1	2	1	2	3	4					

Open Space through Residential [No change.]

Institutional											
Separately Regulated Institutional Uses											
Airports [No change.]											
Amateur Radio Communication	L	L						L	L		
Botanical Gardens & Arboretums through Wireless Communication Facility											
[No change.]											
Retail Sales through signs [No change.]											

Use Categories/ Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones											
	1st & 2nd >>	RM-											
	3rd >>	1-			2-			3-			4-		5-
	4th >>	1	2	3	4	5	6	7	8	9	10	11	12
Open Space through Residential [No change.]													
Institutional													
Separately Regulated Institutional Uses													
Airports [No change.]													
Amateur Radio Communication		L			L			L			L		L
Botanical Gardens & Arboretums through Wireless Communication Facility													
[No change.]													
Retail Sales through Signs [No change.]													

Footnotes for Table 131-04B [No change.]

§131.0522 Use Regulations Table of Commercial Zones

[No change.]

**Table 131-05B
Use Regulations Table for Commercial Zones**

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones				
	1st & 2nd >>	CN ⁽¹⁾ -	CR-	CO-	CV-	CP-

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	3rd >>	1-			1-	2-	1-		1-		1-
	4th >>	1	2	3	1	1	1	2	1	2	1
Open Space through Residential [No change.]											
Institutional											
Separately Regulated Institutional Uses											
Airports [No change.]											
Amateur Radio Communication											
Botanical Gardens & Arboretums through Wireless Communication Facility											
[No change.]											
Retail Sales through Signs [No change.]											

Use Categories/Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone Designator	Zones																	
	1st & 2nd >>	CC-																	
	3rd >>	1-			2-			3-			4-			5-					
	4th >>	1	2	3	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5
Open Space through Residential [No change.]																			
Institutional																			
Separately Regulated Institutional Uses																			
Airports [No change.]																			
Amateur Radio Communication		L			L			L			L			L					
Botanical Gardens & Arboretums through Wireless Communication Facility																			
[No change.]																			
Retail Sales through Signs [No change.]																			

Footnotes to Table 131-05B [No change.]

§131.0622 Use Regulations Table for Industrial Zones

[No change.]

**Table 131-06B
Use Regulations Table for Industrial Zones**

Use Categories/ Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone designator	Zones								
	1st & 2nd >>	IP-		IL-			IH-		IS-	
		3rd >>	1-	2-	1-	2-	3-	1-	2-	1-
		4th >>	1	1	1	1	1	1	1	1
Open Space through Residential [No change.]										

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Use Categories/ Subcategories [See Section 131.0112 for an explanation and descriptions of the Use Categories, Subcategories, and Separately Regulated Uses]	Zone designator	Zones							
	1st & 2nd >>	IP-		IL-			IH-		IS-
	3rd >>	1-	2-	1-	2-	3-	1-	2-	1-
	4th >>	1	1	1	1	1	1	1	1
Institutional									
Separately Regulated Institutional Uses									
Airports [No change.]									
<u>Amateur Radio Communication</u>		<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>	<u>L</u>
Botanical Gardens & Arboretums through Wireless Communication Facility [No change.]									
Retail Sales through Signs [No change.]									

Footnotes for Table 131-06B [No change.]

§141.0420 Wireless Communication Facilities

[No change]

(a) The following uses are exempt from the provisions of Section 141.0420:

(1) ~~Amateur (HAM) radio facilities.~~ Amateur radio communication

(2) [No change.]

§141.0421 Amateur Radio Communication

Amateur radio communication is permitted as a limited use in accordance with Process One in the zones indicated with an “L” in the Use Regulations Tables in Chapter 13, Article 1 (Base Zones), subject to the following regulations.

- (a) Amateur radio communication for purposes of transmitting and receiving radio signals in conjunction with an amateur radio station is regulated by the Federal Communications Commission. The associated development of the *amateur radio*

antenna structures is subject to all local regulations related to placement, screening, and height.

- (b) Amateur radio antenna structures shall comply with the development regulations of the underlying base zone at all times, unless a Site Development Permit has been obtained in accordance with Process Three, as described in Sections 126.0502 and 143.0360.
- (c) Amateur radio antenna structures shall be attached to a support structure that allows it to be easily moved or lowered either mechanically or manually.
- (d) Amateur radio antenna structures shall be located in the least visible location on the site from adjacent public *rights-of-way* and adjacent properties.

§143.0302 When Supplemental Neighborhood Development and Site Development Permit Regulations Apply

[No change.]

**Table 143-03A
Supplemental Neighborhood Development Permit or Site Development Permit
Regulations Applicability**

Type of Development Proposal	Applicable Sections	Required Development Permit/Decision Process
Affordable/In-Fill Housing Projects with Deviations through Multiple Dwelling Unit Development that Varies from Minimum Parking Requirements [No change.]		
<u>Amateur Radio Antenna Structures</u>	<u>141.0421, 143.0360</u>	<u>SDP/Process Three</u>
Nonresidential Development (With TDM Plan) that Varies from Minimum Parking Requirements through Clairemont Mesa Height Limit Overlay Zone [No change.]		

§143.0360 Supplemental Regulations for Amateur Radio Antenna Structures

The following supplemental regulations apply to Site Development Permits for amateur radio antenna structures where deviations from the underlying base zone regulations are requested in order to achieve effective amateur radio communication. The amateur radio communication use is otherwise regulated by the Federal Communications Commission, as described in Section 141.0421.

- (a) Amateur radio antenna structures shall be located in the least visible location on the site from adjacent public rights-of-way and adjacent properties. In no case shall an amateur radio antenna structure be located within a required street yard.
- (b) Amateur radio antenna structures shall be reasonably screened from adjacent public rights-of-way and adjacent properties.
- (c) Where authorized under the Site Development Permit, amateur radio antenna structures may exceed the maximum structure height specified by the underlying base zone in order to achieve effective amateur radio communication. During periods of non-operation, the amateur radio antenna structures shall be lowered for compliance with the maximum structure height of the base zone.
- (d) The applicant shall provide the following information for review and consideration of the deviation request:
 - (1) Manufacturer's specifications for the amateur radio antenna structure and specific details of any associated equipment (such as footings, guide wires and braces, or roof top mounts); and

- (2) A site plan and elevations depicting the location and dimensions of the proposed *amateur radio antenna structure* and any proposed *screen*.
- (e) The *applicant* shall demonstrate that any deviations requested with the Site Development Permit are necessary to reasonably accommodate the associated amateur radio communication.
- (f) Deviation requests will be considered only where the applicable regulations of the Land Development Code would otherwise unreasonably limit reception or transmission of radio signals, or result in excessive expense in light of the cost of the purchase and installation of the *amateur radio antenna structure*.